

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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ERIC W. PAYNE,

Plaintiff,

v.

Case No. 10-cv-00679

DISTRICT OF COLUMBIA, et al., (RWR)

Defendants.

- - - - - x

Wednesday, July 11, 2012

Washington, D.C.

Deposition of

COUNCILMEMBER JIM GRAHAM,

the witness, called for examination by counsel for
the plaintiff, pursuant to notice, held at 1350
Pennsylvania Avenue, N.W., Washington, D.C. 20004,
beginning at 1:25 p.m., before Kelly Susnowitz, a
Notary Public in and for the District of Columbia,
when were present on behalf of the respective
parties:

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A P P E A R A N C E S

For the Plaintiff:

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1 A P P E A R A N C E S

2 (Continued.)

3 For Councilmember Jim Graham:

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20 ALSO PRESENT:

21 Eric Payne, Plaintiff

DEPOSITION OF COUNCILMEMBER JIM GRAHAM
CONDUCTED ON 7/11/2012

4

1 C O N T E N T S

2 Examination by Counsel

3 Witness Page

4 COUNCILMEMBER JIM GRAHAM

5

6 By:

7 Mr. McDaniel 6

8 E X H I B I T S

9 (Attached.)

10 Exhibit Number Marked

11 1 The Washington Times Article Dated

12 September 16, 2011 14

13 2 Washington Post Editorial Dated

14 May 14, 2008 23

15 3 Washington Examiner Article Dated

16 April 10, 2008 28

17 4 The Washington Times Article Dated

18 August 29, 2011 31

19 5 Washington Post Article Dated

20 July 27, 2008 42

21 6 Article by the Editorial Board, 1-26 46

DEPOSITION OF COUNCILMEMBER JIM GRAHAM
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E X H I B I T S

(Continued.)

Exhibit Number	Marked
7 Complaint	53
8 Affidavit of Eric Payne	63
9 Memorandum to Angell Jacobs Dated August 4, 2008	92
10 Excerpt of Dr. Gandhi's Deposition, Pages 150 and 151	144
11 Excerpt of Robert Andary's Deposition, Page 43	153
12 Entry on Mr. Graham's Calendar Dated 6/4/2008	162
13 Excerpt of Robert Andary's Deposition, Pages 105 and 106	164
16 CQ1 Page 15, Lines 12-15 and Line 17	
17 CQ2 Page 40, Lines, 13-21 and Page 41, Lines 1-4	
19 Certified Portion Page 92, Line 21; and Page 20 93, Lines 1-21; Page 94, Lines 1-21; and 21 Page 95, Lines 1-7	

1 S T I P U L A T I O N S

2 It is hereby stipulated and agreed by and
3 between counsel present at this deposition and by
4 the deponent that the reading and signing of this
5 deposition is not waived.

6 Thereupon

7 COUNCILMEMBER JIM GRAHAM,
8 the witness, called for examination by counsel for
9 the plaintiff, and after having been first duly
10 sworn by the Notary Public, was examined and
11 testified as follows: I do.

12 MR. McDANIEL: Good afternoon, Mr. Graham.
13 I'm Brian McDaniel. I represent Mr. Eric Payne, who
14 is the plaintiff in this matter. If I could just
15 ask everybody to identify themselves for the record?
16 I have Mr. Payne here, to my left, who is the
17 plaintiff in this matter and Mr. Randy McDonald from
18 my office.

19 MR. PARSONS: And I'm Keith Parsons. I'm with
20 the Office of the Attorney General, representing the
21 District of Columbia.

1 MS. SAUNDERS: I'm Treva Saunders for the
2 Office of the Chief Financial Officer.

3 MR. BELLACHIACCO: Chris Bellachiaco and I'm
4 also with the Office of the Chief Financial Officer.

5 MS. VENKATESH: Manasi Venkatesh, Office of
6 the General Counsel, here on behalf of
7 Councilmember.

8 MR. HOELLEN: John Hoellen, Office of the
9 General Counsel, at the Council, on behalf of
10 Councilmember Graham.

11 MR. ZVENYACH: David Zvenyach. I'm the
12 general counsel and I'm here on behalf of
13 Councilmember Jim Graham.

14 MR. GRAHAM: And I'm Councilmember Jim Graham.

15 EXAMINATION BY COUNSEL FOR THE PLAINTIFF

16 BY MR. McDANIEL:

17 Q. Mr. Graham, if I could ask you to state
18 and spell your name for the record.

19 A. J-i-m, G-r-a-h-a-m.

20 Q. Mr. Graham, obviously, there's a court
21 reporter sitting to my right and she's taking down

1 everything that I say and she's going to be doing
2 that throughout the deposition. I'm going to be
3 asking you some questions and, hopefully, we'll be
4 getting responses from you. The responses need to
5 be verbal, because the transcriptionist, as you
6 well know, cannot take down head nods or head
7 shakes for responses; so if you could respond
8 verbally, we would appreciate that. If there are
9 any of my questions that are unclear or if you
10 don't understand, please let me know and I'll try
11 to rephrase them so that you understand what I'm
12 asking and I understand what you're answering.
13 Okay? If you need to take a break, just let us
14 know and we can take a break, and there may be
15 occasions, I would imagine, when your counsel will
16 object to some of the questions that I have. One
17 of two things is going to happen, either they are
18 going to object and instruct you to go ahead and
19 answer the question or he's going to object and
20 instruct you not to answer the question, in which
21 case we would probably certify the question and

1 have it dealt with at a later time. Okay? Have
2 you ever been deposed before?

3 A. Not to my recollection.

4 Q. And how are you employed now?

5 A. I am a member of the council of the
6 District of Columbia.

7 Q. And how long have you been a member of the
8 council?

9 A. Since January the first of 1999.

10 Q. And was that the first year that you
11 sought election in 1999?

12 A. 1998.

13 Q. And you've been on the council ever since;
14 is that right?

15 A. That's correct.

16 Q. Let me ask you this. Do you -- well,
17 before you were on the council, how were you
18 employed?

19 A. I was the executive director of the
20 Whitman-Walker Clinic.

21 Q. And what is that?

1 A. It is a healthcare clinic, which had a
2 considerable emphasis on HIV and AIDS and I was
3 very much part of the organization of the
4 community-base response to HIV and AIDS from the
5 earliest days of the epidemic in D.C.

6 Q. And what was your role with that company?

7 A. Well, it was a nonprofit healthcare
8 clinic, and I was the executive director from
9 March of 1984 until January of 1999.

10 Q. And what did you do before that?

11 A. Before that, I had a career in the
12 Federal Government; I served in the United States
13 Senate staff, I had the distinction of having been
14 the last law clerk to Chief Justice Earl Warren; I
15 was with the Federal Agency for three years; I was
16 an adjunct professor of law at Georgetown
17 University Law Center.

18 Q. When was that?

19 A. From 1978 to 1982.

20 Q. What did you teach?

21 A. I taught federal regulation, regulated

1 industries; and I have been on the faculty of the
2 University of Wisconsin Law School. I graduated
3 from the University of Michigan Law School. I
4 have a master's of law from Georgetown University
5 Law Center.

6 Q. And so, in connection with all of those
7 studies, you certainly had courses related to
8 ethics?

9 A. Yes.

10 Q. And prior to assuming your post as a City
11 councilmember, you said that was in 1999, correct,
12 was there any instruction about what the ethical
13 requirements of a City councilmember were before
14 you took your oath? Was there any training or
15 programming you participated in?

16 MR. ZVENYACH: I'm going to, just
17 briefly -- I'm not going to object to the
18 question, but I'm going to let you go for a little
19 bit, but I'm going to start asking about relevance
20 shortly.

21 MR. McDANIEL: Relevance, to the ethics

1 question?

2 MR. ZVENYACH: Relevance to the Court's
3 scope.

4 THE WITNESS: I mean, there were
5 discussions on the rules, the rules that pertained
6 to ethics.

7 BY MR. McDANIEL:

8 Q. When you say, the rules --

9 A. The council's rules.

10 Q. Is there a set of rules that you receive
11 as a councilmember?

12 A. Yes.

13 Q. And what are those called?

14 A. D.C. Council rules.

15 Q. And is that something that you review
16 every year?

17 A. I don't know.

18 Q. If it isn't, then --

19 MR. ZVENYACH: I guess, when you say,
20 review, could you recharacterize the question?
21 I'm not sure it's clear what you're asking.

1 BY MR. MCDANIEL:

2 Q. There's a set of, I guess, enumerated
3 rules for City councilmembers that include ethic
4 considerations and I'm asking him if he reviews
5 those on a yearly basis, bi-yearly?

6 A. No. They would be approved at every
7 session, the beginning of every session of the
8 council. So it wouldn't be annually; it would be
9 every two years.

10 Q. Well, let me ask you if you know Eric
11 Payne?

12 A. Not really.

13 Q. Are you aware of the complaint that has
14 been filed by Mr. Payne?

15 A. Not really.

16 Q. Mr. Graham, I'm going to ask you whether
17 or not you know a young lady named Angell Jacobs?

18 A. No.

19 Q. As you sit here today, you don't recall
20 ever meeting an Angell Jacobs?

21 A. Angell?

1 Q. Angell.

2 A. No, I honestly don't recall Angell Jacobs.

3 Q. An Angell Jacobs that worked with the
4 OCFO's office under Mr. Natwar Gandhi?

5 A. I honestly don't recall any knowledge of
6 her, if it is a woman.

7 (Deposition Exhibit Number 1 was marked
8 for identification.)

9 BY MR. McDANIEL:

10 Q. I'm going to show you what's been marked
11 as Deposition Exhibit Number 1, which is a
12 Washington Times article dated September 16th,
13 2011 and ask you to look at the bottom paragraph.

14 A. I see it, uh-huh.

15 MR. PARSONS: Brian, do you have an extra
16 copy?

17 MR. McDANIEL: I'm sorry, Keith, I do not.

18 BY MR. McDANIEL:

19 Q. At the bottom of that page for the article
20 that's dated September 16th, The Washington Times
21 article, Court findings outline steering of D.C.

1 deal, where it reads, Jim Graham is on a personal
2 vendetta here, Angell Jacobs, a supervisor said to
3 the procurement officer, Eric Payne, according to
4 a transcript of a taped conversation filed in the
5 United District Court, for Gray and Graham, this
6 is all personal. Meaning for Gray and Graham,
7 this is all personal. This is about their friends
8 or who is not their friends, for Graham. Do
9 you -- are you familiar at all, with that
10 statement? Have you seen this article before?

11 A. No, I have not.

12 CQ1 And would you -- in the context of the
13 discussion regarding the rebid of the lottery
14 contract, would you agree with this statement that
15 your position regarding that --

16 MR. ZVENYACH: I'm going to object --

17 CQ1 -- was a personal position?

18 MR. ZVENYACH: I'm going to object at the
19 moment that the court order is very clear that this
20 is limited to the demotion and termination of Eric
21 Payne, that discussions about the lottery contract

1 are not permitted. So if your question is about the
2 lottery contract or whether it's personal, that's
3 outside of the Court's order.

4 MR. McDANIEL: I understand that and so --

5 MR. ZVENYACH: And I'm instructing the
6 witness not to answer that question.

7 MR. McDANIEL: We'll certify that question.
8 So from this point on and I understand -- I'm sure
9 we're going to have a number of those objections and
10 so, if you could say objection per the court order
11 than we'll know and we won't need to waste that
12 time. Okay? So you're instructing him not to
13 answer the question?

14 MR. ZVENYACH: If you want to reread the
15 question, I'll -- could you reread the question,
16 please?

17 MR. McDANIEL: I -- do you want --

18 MR. ZVENYACH: Can I ask the court reporter
19 to reread it, please.

20 (The court reporter complying.)

21 MR. ZVENYACH: Yes, I will instruct the

1 witness not to answer that question.

2 BY MR. McDANIEL:

3 Q. And in fact, when contacted by
4 Mr. Anderson in regard to this article dated
5 September 16th, 2011, on page two, you state there
6 that you couldn't comment on those allegations, in
7 essence on the advice of counsel; is that right?
8 Did you make that statement to Mr. Anderson?

9 MR. ZVENYACH: I'm going to object just
10 for the moment. Let me review this.

11 MR. McDANIEL: Sure.

12 MR. ZVENYACH: I'll instruct the witness,
13 that if he'd like to read those two paragraphs,
14 he's free to do so, and I can read it into the
15 record if that would be helpful.

16 MR. McDANIEL: I can read it. You want
17 the first -- for completeness, you want those two?

18 MR. ZVENYACH: It says, in e-mail --

19 MR. McDANIEL: Very well.

20 BY MR. McDANIEL:

21 Q. The document -- or the article suggests

1 that, in an e-mail to The Washington Times,
2 Mr. Graham stated it would be inappropriate to
3 answer questions that are the subject of the
4 subpoena. The next paragraph, in quotation, says,
5 I'm unable to comment on these allegations. The
6 lawyer for the D.C. Council has advised me against
7 it since this matter -- since it is a matter of
8 pending litigation, he wrote. Did you make that
9 statement to Mr. Anderson -- or send that e-mail
10 rather?

11 MR. ZVENYACH: Do you recall.

12 THE WITNESS: I don't recall.

13 BY MR. McDANIEL:

14 Q. And here, it suggests that you had a
15 conversation, at least, with an attorney regarding
16 a response to a subpoena. Is that your
17 understanding of those two paragraphs?

18 MR. ZVENYACH: I'm going to object on the
19 basis if you're asking about his conversations
20 with an attorney, that would be protected by the
21 attorney/client privilege. And I'm instructing

1 him not to answer on communications he had with an
2 attorney.

3 BY MR. McDANIEL:

4 Q. Let me ask you this. You acknowledge
5 here, at least in the e-mail, that there was an
6 instruction not to comment based upon the fact
7 that there was pending litigation. What
8 litigation was that?

9 MR. ZVENYACH: Again, let me be clear, he
10 does not recall -- he has stated that he does not
11 recall sending that e-mail.

12 MR. McDANIEL: Right. I don't know --

13 BY MR. McDANIEL:

14 Q. The fact that it refers to pending
15 litigation, does that refresh your recollection,
16 at all, regarding why you weren't responding? You
17 don't know what litigation was being referred to?

18 THE WITNESS: Whether I'm responding --

19 MR. ZVENYACH: I guess, is the question,
20 whether he made the statements, he's already
21 answered that he doesn't recall making the

1 statement. If you're asking him whether -- asking
2 about the fact that there's pending litigation
3 refreshes his recollection. Does that refresh
4 your recollection about making this statement?

5 THE WITNESS: No.

6 BY MR. McDANIEL:

7 Q. So if there was this e-mail, you don't
8 know what litigation you would have been referring
9 to; is that right?

10 MR. ZVENYACH: He's already answered he
11 doesn't recall the conversation -- or recall the
12 e-mail.

13 MR. McDANIEL: Right. But there may have
14 been litigation in that time he was familiar with.
15 So I'm asking him, was he familiar with any
16 litigation that was going on surrounding the
17 question of your position regarding Mr. Eric Payne
18 and his treatment of the lottery contract at that
19 time.

20 MR. ZVENYACH: Let me see if I can ask the
21 question, if this characterizes it correctly.

1 MR. McDANIEL: I don't think I -- I don't
2 know -- he didn't say he didn't understand the
3 question.

4 MR. ZVENYACH: Do you understand the
5 question?

6 THE WITNESS: No.

7 MR. McDANIEL: Okay.

8 MR. ZVENYACH: Do you want to
9 recharacterize the question?

10 MR. McDANIEL: Sure.

11 BY MR. McDANIEL:

12 Q. So what I'm asking you is, given the
13 response, the recorded response in this e-mail,
14 were you familiar with any litigation being
15 conducted in the City regarding Eric Payne and his
16 treatment of the lottery contract?

17 A. I don't have a recollection of this
18 e-mail.

19 Q. And I'm clear that you don't recall the
20 e-mail. I'm asking you whether or not you were
21 familiar with or aware of any litigation involving

1 Eric Payne and the lottery contract at that time?

2 MR. ZVENYACH: As of which time?

3 MR. McDANIEL: In and around the date of
4 the article, September 16th, 2011.

5 MR. ZVENYACH: So is the question, whether
6 around September 16th, 2011, Mr. Graham was aware
7 that there was litigation involving Mr. Payne?

8 MR. McDANIEL: Yes.

9 THE WITNESS: I just don't recall.

10 BY MR. McDANIEL:

11 Q. Mr. Graham, do you understand why you're
12 here and being deposed today?

13 A. Not really.

14 Q. Did you review any documentation in
15 preparation for the deposition here today?

16 THE WITNESS: Did I review anything?

17 MR. ZVENYACH: Do you know?

18 THE WITNESS: Not really.

19 BY MR. McDANIEL:

20 Q. When you say, not really, was there some
21 that you don't recall or was there something

1 that --

2 A. Well, there's been a lot of papers.

3 Q. When you say, a lot of papers --

4 A. A lot of papers, you know, about these
5 matters, so whether -- I don't think I reviewed
6 anything specifically for this deposition.

7 Q. Well, you reviewed other documents --

8 A. I've read a lot of documents.

9 Q. Related to the subject matter in this
10 litigation?

11 A. I don't know what the subject matter is in
12 this litigation. Oh, the wrongful termination --
13 the alleged wrongful termination, no.

14 Q. You haven't read any documents regarding
15 that?

16 A. Wrongful termination, no.

17 (Deposition Exhibit Number 2 was marked
18 for identification.)

19 BY MR. McDANIEL:

20 Q. And Mr. Graham, do you read the paper,
21 occasionally, editorials?

1 A. Yes.

2 Q. Editorials particularly regarding items
3 that involve you and --

4 A. Typically.

5 Q. Okay. Let me show you what's been marked
6 as Exhibit Number 2 and ask you to take a look at
7 that.

8 MR. ZVENYACH: I'm sorry, I don't see
9 anything that's relevant to Mr. Payne in here.

10 MR. McDANIEL: I'm going to ask him some
11 questions about the document and, if there's an
12 objection --

13 MR. ZVENYACH: Well, before you ask the
14 question, I'm going to object on the basis of
15 relevance. What does this have to do with the
16 deposition today?

17 MR. McDANIEL: Well, I'll note your
18 objection and we'll ask the question and he can
19 respond or not.

20 BY MR. McDANIEL:

21 Q. Mr. Graham, at the first paragraph of this

1 exhibit, it reads that the D.C. Council --

2 MR. ZVENYACH: I'm going to object. This
3 is outside of the Court's order.

4 MR. McDANIEL: We noted that for the
5 record. Thank you.

6 BY MR. McDANIEL:

7 Q. The D.C. Council is playing games with a
8 fair process for choosing a lottery contractor.
9 Playing the lottery is all about risk and money,
10 but the games the D.C. Council is playing with a
11 proposed new lottery contract risks more than tens
12 of millions of dollars. They threaten to
13 seriously compromise the integrity of how the
14 District Government does business. Mr. Graham,
15 I'm going to simply ask you whether you agree or
16 disagree with that statement?

17 MR. ZVENYACH: Which statement?

18 MR. McDANIEL: The statement that I just
19 read.

20 MR. ZVENYACH: You mean the Post's
21 characterization?

1 MR. McDANIEL: Do you want me -- I can
2 read it again. I'm asking him whether or not he
3 agrees or disagrees with that statement.

4 MR. ZVENYACH: I guess what I'm trying to
5 understand, when you say, this statement, are you
6 referring to the accuracy of that statement or
7 whether you agree that's an accurate reading of
8 that statement?

9 MR. McDANIEL: I understand. I'm asking
10 whether he agrees with the substance of the
11 statement.

12 MR. ZVENYACH: The substance of the
13 statement.

14 MR. McDANIEL: Right.

15 MR. ZVENYACH: I guess, I'm again going to
16 object and ask how this is relevant?

17 MR. McDANIEL: It's relevant within the
18 context of why it is that Mr. Graham may have done
19 what we allege he has done, which is exercise
20 influence over Mr. Gandhi regarding Mr. Payne's --

21 MR. ZVENYACH: If you want to establish a

1 predicate for that, we may be able to get there
2 but, at this point, I'm going to object to
3 relevance.

4 MR. McDANIEL: Very well. And you're
5 instructing him not to answer?

6 MR. ZVENYACH: At this point.

7 BY MR. McDANIEL:

8 Q. In the third paragraph, towards the
9 middle, it reads, Councilmember Jim Graham, who
10 made the motion to table the matter, asserted that
11 there are unanswered questions about the winning
12 bid. The contention is belied by the hundreds of
13 pages of documents the chief financial officer
14 compiled during a vigorous year-and-a-half long
15 process. The office even went the extra mile to
16 answer questions from councilmembers that were not
17 germane to whether the firm is a credible or
18 responsible bidder. Mr. Graham, were you aware of
19 when the proposed contract for the lottery was
20 submitted --

21 MR. ZVENYACH: I'm going to object on the

1 basis of legislative immunity.

2 Q. -- to the council?

3 MR. ZVENYACH: I object on the basis of
4 legislative immunity and instruct the witness not
5 to answer.

6 MR. McDANIEL: With respect to when it was
7 advanced?

8 MR. ZVENYACH: It's in consideration with
9 the lottery contract and it's protected by the
10 speech and obey clause.

11 MR. McDANIEL: And you're instructing him
12 not to answer?

13 MR. ZVENYACH: That's correct.

14 MR. McDANIEL: I'm going to mark this as
15 Exhibit 3.

16 (Deposition Exhibit Number 3 was marked
17 for identification.)

18 MR. ZVENYACH: I'm going to initiate on
19 the outset again and ask how this is relevant.

20 MR. McDANIEL: If you could just note your
21 objection.

1 MR. ZVENYACH: It's been noted.

2 MR. McDANIEL: Right. And then we'll deal
3 with that after I answer the question. I'm not
4 going to justify my questions to you.

5 MR. ZVENYACH: Okay. That's fine.

6 BY MR. McDANIEL:

7 Q. Mr. Graham, I'm going to direct your
8 attention to the middle of the document, where it
9 starts with, in Ward I, Council, Jim Graham,
10 called on Fenty to spike the lottery deal.
11 Graham, in particular, cited the brief
12 nine-month-old history of W2 Tech, the
13 questionable gaming experience of key local
14 players and the background of W2 Tech's principle
15 owners. And in the next sentence, there's a quote
16 from you that says, I'm very pleased to hear that,
17 Graham said, when told the deal was being
18 withdrawn. Number 1, do you recall making this
19 statement about the withdrawal of the W2 Tech
20 contract?

21 MR. ZVENYACH: I'm going to object on two

1 basis. The first is relevance; and the second is,
2 again, legislative immunity; and the third, it is
3 outside the scope and I'm instructing the witness
4 not to answer.

5 BY MR. McDANIEL:

6 Q. Mr. Graham, were you, at that point in
7 time, in opposition to the W2 Tech contract for
8 the lottery?

9 MR. ZVENYACH: I'm going to object, four
10 basis: The first is it's not clear which time
11 you're talking about; second is relevance; the
12 third is that it is protected by legislative
13 immunity; and the fourth is, it's beyond the
14 scope; and I'm instructing the witness not to
15 answer.

16 BY MR. McDANIEL:

17 Q. I'm talking about now, in and around the
18 time of the actual article, April 10, 2008.

19 MR. ZVENYACH: Well, it's not dated. Oh,
20 it is dated.

21 MR. McDANIEL: It is dated.

1 MR. ZVENYACH: Well, in any event, I still
2 object and instruct the witness not to answer.

3 BY MR. McDANIEL:

4 Q. In the lower portion of the article it
5 says there, on Monday, Graham asked why the
6 District would turn over an extremely valuable
7 contract to the owner of an establishment with a
8 pattern of violent events. Mr. Graham, do you
9 recall making that statement?

10 MR. ZVENYACH: I'm going to object.
11 Again, relevance; again, legislative immunity; and
12 again, beyond the scope of the Court's order; and
13 I'm instructing the witness not to answer.

14 (Deposition Exhibit Number 4 was marked
15 for identification.)

16 BY MR. McDANIEL:

17 Q. And you agree, in certain, since I'm
18 asking you about reported public statements were
19 made to either writers or on some unofficial
20 record; do you agree that's what we're talking
21 about, some of your own statements that have been

1 recorded?

2 MR. ZVENYACH: Do you understand the
3 question?

4 THE WITNESS: No.

5 BY MR. McDANIEL:

6 Q. Well, the articles seem to attribute these
7 comments to you, made in a public matter, such
8 that they can be recorded by the writer of the
9 article. In many instances, the language that's
10 attributed to you is surrounded by or enclosed by
11 quotation marks. Do you agree that it seems to be
12 statements that are attributed to you that we're
13 talking about?

14 MR. ZVENYACH: Do you understand the
15 question?

16 THE WITNESS: No.

17 BY MR. McDANIEL:

18 Q. You know what quotation marks are?

19 A. Let me think. Yes, I know what quotations
20 marks are.

21 Q. All right. And normally, quotation marks

1 are used to denote that an individual has made a
2 statement and that, oftentimes, it's included in a
3 particular document, right, correct? You have to
4 say correct, because we --

5 A. Yeah, I guess.

6 Q. You don't recognize that, that that's --

7 A. I don't understand the point of the
8 question.

9 Q. Right. I'm just trying, in essence,
10 establish --

11 A. Do statements have quotation marks
12 sometimes?

13 Q. Right. And they're attributed to you.

14 MR. ZVENYACH: I think, maybe what way you
15 can do this is we can stipulate for the last four
16 exhibits --

17 MR. McDANIEL: I'm sorry, Mr. Zvenyach, I
18 appreciate your help, but I don't need it. Thank
19 you very much, though.

20 MR. ZVENYACH: Well, perhaps we can
21 resolve this quickly and we can say that the last

1 four exhibits are all news articles, they're
2 editorials and they have quotation marks,
3 surrounding quotes, attributed to Councilmember
4 Graham.

5 MR. McDANIEL: And what I was asking him,
6 if he agreed these were purported statements
7 attributed to him. That's what I was asking,
8 which is different than your question.

9 BY MR. McDANIEL:

10 Q. So do you understand that that's what
11 we're talking about, statements that are
12 attributed to you?

13 A. By Jeffrey Anderson in The Washington
14 Times?

15 Q. And the other documents that we reviewed.

16 A. Whether there's a quotation mark
17 attributed to me?

18 Q. Right, saying, Jim Graham stated.

19 A. Are you asking me whether this exists on
20 paper somewhere?

21 Q. No. I'm asking you whether or not you

1 agree with me that we are talking about statements
2 that are attributed to you.

3 MR. ZVENYACH: I guess --

4 MR. McDANIEL: I don't know. Is that a
5 difficult question?

6 MR. ZVENYACH: It's a confusing question.
7 Again, I realize you're trying to be -- you're
8 trying to ask a question. Let me help you out
9 here.

10 MR. McDANIEL: I don't need any help. I
11 appreciate your help. I don't need your help.

12 MR. ZVENYACH: Then we'll be doing this
13 for a while.

14 MR. McDANIEL: Then we'll be doing it for
15 a minute until we can get passed this quotation
16 mark piece.

17 MR. ZVENYACH: Okay. Go ahead.

18 BY MR. McDANIEL:

19 Q. So I'm asking you, Councilmember Graham,
20 if you -- having reviewed the documents, if you
21 understand that we're talking about statements

1 which are attributed to you by the individuals who
2 are writing the articles? Is that your
3 understanding or do you need to review them again?

4 A. You just handed me this.

5 Q. Right. No, I'm talking about the
6 articles, for instance, which you've read in
7 connection with this deposition that have --

8 A. The earlier exhibits?

9 Q. Yes, sir.

10 MR. ZVENYACH: Again, I'm going to refer
11 to Exhibit 1 because I want to be sure he
12 understands it.

13 MR. McDANIEL: Okay. Let's go back for
14 one second.

15 MR. ZVENYACH: He's indicated, in Exhibit
16 1, that he doesn't recall making the statement.

17 MR. McDANIEL: Right. I understand that.
18 But what I'm asking him is whether or not he
19 understands these are statements attributed to him
20 within the article, that's what I'm asking him.

21 MR. ZVENYACH: If you can answer the

1 question, answer it.

2 THE WITNESS: It appears that though there
3 are statements which have quotes on them with my
4 name.

5 BY MR. McDANIEL:

6 Q. And that at least the writer is saying
7 that these are statements that you made?

8 A. They appear and they are on these pieces
9 of paper.

10 Q. I understand that, sir, but it appears
11 that the writer is saying that you said these
12 things, right?

13 A. Such words and sentences, with quotations
14 marks, are in these papers.

15 Q. Right. And so, you don't want to say, in
16 essence, that the writer is attributing these
17 words to you?

18 A. I've said what I'm going to say.

19 Q. Okay. Do you have Exhibit 4 there in
20 front of you?

21 A. Uh-huh.

1 Q. I'm going to direct you to the third page
2 of this document, the bottom where it says, but
3 sources with knowledge of political machination
4 surrounding the lottery --

5 MR. ZVENYACH: Just one moment, we have to
6 find the page.

7 MR. McDANIEL: I'm sorry.

8 MR. ZVENYACH: You said it's on the third
9 page? Are you on the bottom of the second page?

10 MR. McDANIEL: I'm sorry, I'm looking at
11 the portion of the article which comes under the
12 notation, no insight offered. If I could see the
13 document, I could point it out to you. It's on
14 the third page of this document.

15 MR. ZVENYACH: This is Exhibit 4?

16 MR. McDANIEL: Right, of Exhibit 4.

17 BY MR. McDANIEL:

18 Q. I'm starting here, at the bottom,
19 Mr. Graham, with, but sources. First, let me ask
20 you, have you seen this article, at all?

21 A. I don't recall.

1 Q. This is an article from The Washington
2 Times dated August 29, 2011, again, written by
3 Mr. Jeffrey Anderson and, at the bottom of page
4 three it says, but sources with knowledge of
5 political machination surrounding the lottery
6 contract worry that Mr. Gandhi went too far to
7 accommodate councilmembers who wanted to control
8 the outcome of a competitive bidding process. And
9 I'm going to refer you to the next page. It says,
10 a prime example involves Councilmember Jim Graham,
11 a former member of the committee on finance and
12 revenue, who along with Mr. Gray thwarted a
13 \$30 million contract award to an ally of
14 former-Mayor Adrian M. Fenty despite the award
15 resulting from a competitive bidding process.
16 Sir, your testimony is that you haven't read this
17 article?

18 MR. ZVENYACH: That was not his testimony.

19 Q. Oh, you don't recall? Do you know to
20 which contract Mr. Anderson is referring to?

21 MR. ZVENYACH: Object. How is this

1 relevant?

2 MR. McDANIEL: Again, I'm not going to --

3 MR. ZVENYACH: Well, then I'm going to
4 object on the basis of relevance and I'm also
5 going to object on the basis of legislative
6 immunity and I'm going to object on the basis of
7 scope and instruct the witness not to that answer.

8 MR. McDANIEL: Okay.

9 BY MR. McDANIEL:

10 CQ2 And in the paragraph after that, it says
11 that e-mails obtained by the time show that, in
12 2008, Mr. Graham met with representatives of
13 W2 Tech, a company run by D.C. businessman Warren C.
14 Williams, Junior and his wife, Alaka, after the company
15 won the contract with Greek gaming giant Intralot.
16 At that meeting, Mr. Graham offered to support W2
17 Tech2Tech if Mr. Williams agreed to withdraw from a
18 development project at a Metro station he had won
19 with ties to Mr. Fenty according to the e-mails.
20 Let me ask you this, Mr. Graham, do you recall a
21 meeting in 2008 with Ms. Alaka Williams regarding

1 the contract?

2 MR. ZVENYACH: Objection. Outside of the
3 scope and protected by legislative immunity and
4 instruct the witness not to answer.

5 MR. McDANIEL: Certify that question,
6 please.

7 By MR. McDANIEL:

8 Q. You recognize here, at least, the
9 representation is that you met with these folks
10 and that there was, at least, pressure on them to
11 withdraw from one contract consideration in return
12 for your support on the lottery contract?

13 MR. ZVENYACH: Objection. Protected by
14 legislative immunity and outside of the scope of
15 the Court's order. And I might do this for the
16 record since you're going to certify it. The
17 Court's order, which is May 14th, 2012 and
18 June 1st, 2012 provides that Payne may depose
19 Councilmember Graham and Mayor Gray as to
20 communications each have with the CFO relating to
21 Payne's motion and termination. The objections to

1 any inquiry -- deposition inquiry into the
2 then-Councilmember's review of the lottery
3 contract and Gray's April 2009 comment to Payne
4 are sustained. Objection and instruct the witness
5 not to answer.

6 MR. McDANIEL: Now --

7 MR. ZVENYACH: And just so we're clear,
8 we're on page 26 of the May 14th order.

9 MR. McDANIEL: All right. Since we said
10 that, I don't think we need to return to that
11 again. I understand what you mean by the
12 objections.

13 MR. ZVENYACH: I just want to be clear.

14 MR. McDANIEL: I understand.

15 (Deposition Exhibit Number 5 was marked
16 for identification.)

17 By MR. McDANIEL:

18 Q. Let me show you what's been marked as
19 Deposition Number 5. Let me ask you, sir, have
20 you seen this article dated July 27, 2008, D.C.
21 Council must put politics aside in choosing a

1 lottery company?

2 MR. ZVENYACH: I'm going to object on the
3 basis of relevance --

4 MR. McDANIEL: All you need to do is --

5 MR. ZVENYACH: -- but I'll ask him to
6 answer the question.

7 MR. McDANIEL: All you need to do -- I
8 don't need to know the basis.

9 MR. ZVENYACH: I'd like to -- if you're
10 going to certify the question, I'd like to state
11 the basis.

12 MR. McDANIEL: I haven't certified that,
13 so.

14 MR. ZVENYACH: Well, I'm preparing.

15 MR. McDANIEL: All right.

16 MR. ZVENYACH: And I'm entitled to state
17 the basis of my objection.

18 THE WITNESS: I don't recall.

19 BY MR. McDANIEL:

20 Q. Okay. Let me ask you about the first
21 paragraph which states, just for fun, I asked a

1 bunch of D.C. councilmembers why it's been so hard
2 to decide between the company that has run the
3 D.C. lottery for the past 25 years and an upstart
4 challenger that, according to independent
5 consultants, is offering to do a better job at a
6 lower cost. The paragraph -- the third paragraph
7 in this article says --

8 MR. ZVENYACH: Could you read the second
9 one, too, since you're reading off --

10 MR. McDANIEL: No, I'm not going to do
11 that. This is my deposition. If you want to
12 depose him, you can depose him. The third
13 paragraph says, oh, no, says Councilmember Jim
14 Graham, the Ward I Democrat. If we were to make
15 political donations a problem in getting a
16 contract with government, we wouldn't have any
17 contractors doing business with government.

18 Mr. Graham, what did you mean by that statement?

19 MR. ZVENYACH: I'm going to object.
20 Again, relevance; again, protected by legislative
21 immunity; and again, outside of this scope's order

1 and, if you like me to read it, I will; but
2 otherwise, I'll simply object and instruct the
3 witness not to answer it.

4 BY MR. McDANIEL:

5 Q. The paragraph below that says, why might
6 councilmembers be reluctant to get rid of LTE even
7 though the company uses decades-old technology and
8 suffered the worst security breach in U.S.
9 history. Do you know what the writer is referring
10 to there, sir?

11 MR. ZVENYACH: Again, I'm going to object
12 on the basis of relevance, the basis of
13 legislative immunity and on the basis of this
14 Court's order and the scope and instruct the
15 witness not to answer.

16 BY MR. McDANIEL:

17 Q. Your response there, attributed to you is
18 politics; do you remember making that statement,
19 sir?

20 MR. ZVENYACH: Again, renew the objection
21 and instruct the witness not to answer.

1 (Deposition Exhibit Number 6 was marked
2 for identification.)

3 BY MR. McDANIEL:

4 Q. I'll show you what was marked as
5 Deposition Exhibit Number 6. This is a document,
6 an article, editorial article, on January 26th
7 related to a May 29, 2008 meeting, in the first
8 paragraph there, Mr. Graham, it says, referring to
9 this first paragraph, on May 29, 2008, D.C.
10 Councilmember Jim Graham, Democrat Ward I, met
11 with representatives of a District business who
12 were pressing their bid for the City's lottery
13 contract. Mr. Graham, do you recall that meeting?

14 MR. ZVENYACH: Again, I've already
15 objected to that question, because it's outside
16 the scope of the Court's order and it's protected
17 by legislative immunity and instruct the witness
18 not to answer. But further ask, which editorial
19 is this?

20 MR. McDANIEL: It's an editorial from the
21 Editorial Board.

1 MR. ZVENYACH: It doesn't say the year or
2 the source.

3 MR. McDANIEL: I believe it's the 2012
4 Washington Post, from my understanding.

5 MR. ZVENYACH: Okay.

6 BY MR. McDANIEL:

7 Q. Sir, have you seen this document?

8 MR. ZVENYACH: Again, I've already
9 objected and instructed the witness not to answer.

10 MR. McDANIEL: You're asking him not to
11 answer whether he's seen it or not?

12 MR. ZVENYACH: I've, again, objected on
13 the basis of relevance and the basis of
14 legislative immunity and the basis of beyond the
15 scope. If you eventually can demonstrate that
16 this somehow fits within the scope, I'll allow him
17 to answer, but at the moment, I'm instructing him
18 not to answer the question.

19 BY MR. McDANIEL:

20 Q. I'm going to ask you to turn to page two,
21 paragraph three, the second sentence of that third

1 full paragraph, there it says, seriously, I do not
2 like the last line. It empowers Graham too much.
3 It suggests that whatever we discussed, we
4 realized the subject matter may be dirty and,
5 thus, we became a part of it and we considered it,
6 wrote Intralot, Vice President Byron Boothe on
7 June 11th. Sir, had you seen that representation
8 made by Mr. Boothe on June 11th?

9 MR. ZVENYACH: Well, this is hearsay upon
10 hearsay at the outset. And again, it's related to
11 the lottery contract --

12 MR. McDANIEL: If you're directing him not
13 to answer it, you can --

14 MR. ZVENYACH: I don't need your help
15 either. I'm instructing him --

16 MR. McDANIEL: Well, you're offering help;
17 I'm just offering it, too.

18 MR. ZVENYACH: Okay. And I'm telling you,
19 it's irrelevant, it's beyond the scope of the
20 Court's order; it's protected by legislative
21 immunity; and I'm instructing him not to answer.

1 BY MR. McDANIEL:

2 Q. All right. In the paragraph below that,
3 Mr. Graham, it represents that he assured
4 Mr. Graham that neither Mr. Williams nor his
5 friend, Sinclair Skinner, was involved with the
6 poster and that neither Mr. Williams nor any
7 relative ever made any contribution to the
8 campaign of Chad Williams who challenged your
9 seat. Did you receive that communication,
10 Mr. Graham?

11 MR. ZVENYACH: I'm not sure what
12 communication you're referring to.

13 MR. McDANIEL: In that fourth paragraph,
14 it says, that same day, Mr. Link wrote to
15 Mr. Graham, as for Metro, there are a number of
16 factors that make it impossible for us to even
17 consider accommodating your request. This is in
18 relationship the purported request from Mr. Graham
19 to Mr. Williams and Mrs. Williams to withdraw from
20 the Metro contract -- WMATA contract, for the
21 Florida Avenue project, in return for his support

1 on the lottery contract.

2 MR. ZVENYACH: Right. And I'm going to
3 object on the basis of relevance, legislative
4 immunity and it's outside the scope of the Court's
5 order and instruct the witness not to answer.

6 BY MR. McDANIEL:

7 Q. So Mr. Graham, do you know who Sinclair
8 Skinner is?

9 MR. ZVENYACH: Councilmember, do you know
10 him?

11 A. Yes.

12 Q. Who is Sinclair Skinner?

13 A. He's a person.

14 Q. Right. We're all people, but you say you
15 know him in the same way that -- or to distinguish
16 him from people that you don't know, so we're all
17 people, people that you know and people that you
18 don't know. I'm trying to figure out how you know
19 Sinclair Skinner.

20 A. He was an ANC Commissioner in Ward I.

21 Q. And did you have any interaction with

1 Mr. Skinner that allowed you to develop an opinion
2 of him?

3 MR. ZVENYACH: I'm not sure how this is
4 relevant, but if you know the answer. Do you
5 understand the question?

6 THE WITNESS: I don't understand the
7 question.

8 BY MR. McDANIEL:

9 Q. Did you have any interactions with
10 Mr. Skinner --

11 A. Yes.

12 Q. -- that allowed you to develop an opinion
13 of him?

14 A. Oh.

15 THE WITNESS: Is he asking whether I have
16 an opinion of Sinclair Skinner?

17 MR. ZVENYACH: I think that's what he's
18 asking.

19 BY MR. McDANIEL:

20 Q. Yes. Do you have an opinion of Sinclair
21 Skinner?

1 THE WITNESS: What does that have to do
2 with --

3 MR. ZVENYACH: I'm going to let you answer
4 the question if you know, but if -- I'm soon going
5 to object.

6 THE WITNESS: I have opinions about a lot
7 of things.

8 BY MR. McDANIEL:

9 Q. Well, I'm asking you about Sinclair
10 Skinner. So do you have an opinion of Sinclair
11 Skinner?

12 A. As an ANC Commissioner?

13 Q. In general.

14 MR. ZVENYACH: Do you have an opinion of
15 Sinclair Skinner, in general? It seems like a yes
16 or no question.

17 THE WITNESS: Yes, I have an opinion.

18

19 BY MR. McDANIEL:

20 Q. Did you accuse Mr. Skinner of supporting a
21 political opponent of yours?

1 MR. ZVENYACH: I'm going to object at this
2 point and ask how this fits within the Court's
3 scope?

4 Q. Did you make any allegations, at any point
5 in time, that Mr. Skinner was responsible for
6 putting up signs related to you?

7 MR. ZVENYACH: I'm going to renew the
8 objection and ask how this relates to the Court's
9 order, with respect to scope?

10 Q. Did you accuse Warren Williams of making a
11 political contribution to an opponent of yours?

12 MR. ZVENYACH: I'm going to object and ask
13 how this relates to the scope of the Court's
14 order?

15 (Deposition Exhibit Number 7 was marked
16 for identification.)

17 BY MR. McDANIEL:

18 Q. I'm going to ask, Mr. Graham, if you
19 have -- I'm going to ask you to take a look at
20 that and let me know if you ever seen that before.

21 A. No.

1 Q. This is the complaint of Mr. Payne in
2 connection with this litigation. Has anyone ever
3 showed you this before?

4 A. Not to my recollection.

5 Q. When is it that you first became aware of
6 the fact that Mr. Payne had made a complaint
7 against the District of Columbia, if ever?

8 A. I really don't recall.

9 Q. You recall, at some point in time,
10 becoming aware of it, though; is that right?

11 A. I think so.

12 Q. Do you remember approximately when that
13 was?

14 A. When was this filed?

15 Q. That would have been in 2010.

16 A. Sometime after that.

17 Q. Would you say you found out about it in
18 2010 or 2011, if you recall?

19 A. I really -- you know, I really don't
20 recall just when specifically I found out about
21 this complaint.

1 Q. Do you remember the context in which you
2 found out about the complaint?

3 A. No, I do not.

4 Q. Do you remember if somebody told you about
5 it or if someone showed you it?

6 A. I don't recall.

7 Q. In that conversation, whenever that was,
8 were you made aware of the fact that there were
9 allegations related to you and your communications
10 with a Mr. Natwar Gandhi?

11 A. I really don't recall.

12 Q. Do you know who Natwar Gandhi is?

13 A. I do.

14 Q. And who is Mr. Gandhi?

15 A. He is the chief financial officer of the
16 District of Columbia.

17 Q. Do you know how long he's been in that
18 position?

19 A. As long as I have been a councilmember.

20 Q. Since 1999?

21 A. Or earlier. I don't recall, but as long

1 as I've been a councilmember.

2 Q. So at least since 1999?

3 A. Yes.

4 Q. In that period of time, have you developed
5 a relationship with Mr. Gandhi?

6 A. Yes, I have.

7 Q. And how would you describe that
8 relationship?

9 A. Professional.

10 Q. Do you all have occasion to meet related
11 to legislation that is pending before the council?

12 MR. ZVENYACH: You can answer that
13 question. Have you ever met?

14 THE WITNESS: He asked a different
15 question.

16 MR. McDANIEL: You want me to ask a
17 different question?

18 THE WITNESS: No, no, no, no. I might
19 want you to restate the question you just asked.

20 BY MR. McDANIEL:

21 Q. Have you, on occasion, met with Mr. Gandhi

1 related to items that are pending before the
2 council for consideration?

3 A. Yes.

4 Q. When did you start doing that, you think,
5 having those types of meetings with Mr. Gandhi?

6 A. It had to have been quite early on in my
7 tenure.

8 Q. So shortly after 1999?

9 A. I would think.

10 Q. And you would meet with Mr. Gandhi so that
11 you could exchange information with him and he
12 could share information with you?

13 A. Presumably.

14 Q. And you would use that information in
15 forming your opinion about things; is that right?

16 MR. ZVENYACH: I'm going object at this
17 point and instruct the witness not to answer, on
18 the basis of legislative immunity. It's
19 information gathering related to legislation
20 that's within the legislative sphere and;
21 therefore, we're going to object.

1 MR. McDANIEL: I'm not asking him about
2 particular legislation or anything of that nature.

3 MR. ZVENYACH: It's related to his
4 decision-making process with respect to
5 legislation; therefore, within the legislative
6 sphere and I'm going to object.

7 BY MR. McDANIEL:

8 Q. In relationship to the lottery contract,
9 did you have meetings with Mr. Gandhi related to
10 those concerns?

11 MR. ZVENYACH: I'm sorry, you have to --
12 I'm going to ask you to rephrase the question on
13 the basis of form. What concerns?

14 MR. McDANIEL: Well, concerns related to
15 how the lottery contract was being serviced or
16 handled within the OCFO's office specifically with
17 respect to Mr. Payne?

18 MR. ZVENYACH: Do you understand the
19 question?

20 THE WITNESS: No, I really don't.

21 BY MR. McDANIEL:

1 Q. Let's break it down. Did you have
2 conversations with him regarding the OCFO's
3 handling of the lottery contract?

4 A. Did I have conversations with him over his
5 handling? He is the CFO.

6 Q. Right. I mean, his office is handling it,
7 right? I mean, they're the ones that would
8 advance the contract to council for its
9 consideration, right?

10 MR. ZVENYACH: I think -- I understand
11 where you're trying go with this and --

12 MR. McDANIEL: Well, you asked me to lay
13 some foundation, so I've got to establish they had
14 these conversations.

15 MR. ZVENYACH: I'm trying to figure out a
16 way that we can do this. The concern that I have
17 is related to the legislative immunity and trying
18 to make sure that we don't go into the lottery
19 contract. I'm going to give you a little bit of
20 latitude about Mr. Payne's handling of the lottery
21 contract, but I'm not going to go into the CFO's

1 general handling of the lottery contract.

2 MR. McDANIEL: See, I understand that. I
3 haven't asked that question. I'm just asking him,
4 generally --

5 MR. ZVENYACH: I just want to make sure we
6 get there, so.

7 MR. McDANIEL: Sure. Whether or not he
8 recalls having conversations with Dr. Gandhi, at
9 all, about the lottery contract?

10 MR. ZVENYACH: You can answer that
11 question.

12 THE WITNESS: Yes.

13 BY MR. McDANIEL:

14 Q. When do you first recall having
15 conversations with Dr. Gandhi regarding that?

16 MR. ZVENYACH: If you recall.

17 A. It would have been in 2008.

18 Q. Would it have been the early or the middle
19 part of 2008, if you recall?

20 A. Not early, closer to the end.

21 Q. The conversations that you had with

1 Mr. Gandhi, do you recall, at least, the first
2 conversation, if anyone else was present?

3 A. I don't recall.

4 Q. Do you recall ever having any meetings in
5 which Mr. Payne was present?

6 MR. ZVENYACH: With Mr. Gandhi?

7 A. With Mr. Gandhi?

8 Q. With Mr. Gandhi.

9 A. No, I don't recall any such meetings.

10 Q. In 2008, who did you understand Mr. Payne
11 to be?

12 A. He was the director of contracts and
13 procurement, I think, or a title to that effect
14 within the OCFO.

15 Q. And how did you know that was his title?

16 A. I recall it being mentioned at the hearing
17 on April the 7th.

18 Q. And what hearing are you referring to?

19 A. The hearing before the finance committee
20 that he testified at.

21 Q. When you're saying, he testified at, who

1 is he?

2 A. Payne.

3 Q. So you do recall Mr. Payne testifying at
4 that hearing?

5 A. Right, and I think that was my first and
6 only substantive exposure to Mr. Payne.

7 Q. In this hearing, Mr. Payne testified, if
8 you recall, about his position with respect to the
9 contract; is that what -- I'm talking about what
10 Mr. Payne said now.

11 MR. ZVENYACH: I understand, but it's
12 related to the hearing and it's within the
13 legislative sphere.

14 MR. McDANIEL: So you're instructing him
15 not to answer?

16 MR. ZVENYACH: I'm going to wait until you
17 ask him the full question, but that's where it's
18 going.

19 BY MR. McDANIEL:

20 Q. Do you recall what it is that Mr. Payne
21 was testifying about?

1 MR. ZVENYACH: I'm going to object on the
2 basis of legislative immunity and instruct the
3 witness not to answer.

4 Q. At that point in time, Mr. Graham, did you
5 have a position on whether or not the contract
6 that had been advanced by the OCFO should have
7 been approved or ratified by the council?

8 MR. ZVENYACH: I'm going to object on the
9 basis of legislative immunity and the Court's
10 scope and instruct the witness not to answer.

11 Q. And did, whatever opinion you have of the
12 contract, inform your discussions with Mr. Gandhi
13 regarding that contract?

14 MR. ZVENYACH: I'm going to object,
15 legislative immunity, outside the scope and
16 instruct the witness not to answer.

17 (Deposition Exhibit Number 8 was marked
18 for identification.)

19 By MR. McDANIEL:

20 Q. Mr. Graham, I'm going to show you what's
21 been marked as Deposition Exhibit Number 8 and ask

1 you to review that and let me know if this is
2 something that you've seen before.

3 A. I've never seen this.

4 Q. At paragraph two, the bottom, where
5 Mr. Payne says that, in the immediate case,
6 certain D.C. councilmembers, including Chairman
7 Gray and Councilmembers Evans and Graham engaged
8 in direct communications with the CFO regarding
9 the immediate contract award during the period of
10 time when there was great pressure being exerted
11 upon me to cancel the lottery contract award.
12 Now, after the April 7, 2008 meeting that we
13 referred to earlier, Mr. Graham, did you have any
14 discussions in that week with Mr. Gandhi regarding
15 Mr. Payne?

16 A. During what week?

17 Q. During the week of April the 7th, 2008.

18 A. I don't recall any such conversations.

19 Q. When you say, you don't recall, do you
20 mean by that there may have been a conversation
21 and you just don't remember?

1 A. I don't think there was. I don't think
2 there was.

3 Q. If you would turn with me then to
4 paragraph eight. In that first sentence of that
5 paragraph, paragraph eight, it says that during an
6 April 9th council of the whole budget hearing,
7 Councilmember Graham urged the CFO to withdraw the
8 contract and fully address questions raised during
9 the council roundtable on April the 7th, 2008. Do
10 you recall that meeting?

11 MR. ZVENYACH: I'm sorry, the 2008 budget
12 hearing?

13 MR. McDANIEL: Yes.

14 MR. ZVENYACH: I'm going to object on the
15 basis of legislative immunity and beyond the scope
16 of the Court's order and instruct the witness not
17 to answer.

18 MR. McDANIEL: You're instructing him not
19 to answer --

20 MR. ZVENYACH: That is correct.

21 MR. McDANIEL: Let me finish asking you.

1 Whether or not he remembers the April 9, 2008
2 meeting?

3 MR. ZVENYACH: That's correct.

4 BY MR. McDANIEL:

5 Q. Sir, at the bottom of that paragraph,
6 paragraph eight, it says that -- starting with
7 following, following my profane discussion with
8 Gray, I, along with another OCFO employee
9 approached Councilmember Graham in order to
10 determine specific substance of concerns that he
11 had about W2 Tech2I or the proposed contract.
12 Rather than mentioning any concerns, he insisted
13 that I call Dottie Love Wade and gave me her
14 number. My call to her became the basis for
15 Graham's subsequent complaint against me to the
16 CFO and the OIO. So we'll talk in a minute about
17 the complaint that you made and maybe you will or
18 maybe you won't answer questions about that. But
19 do you recall, after the April 9, 2008 meeting,
20 Mr. Payne approaching you about those concerns
21 that you had expressed?

1 MR. ZVENYACH: I'm sorry. Can you restate
2 that question?

3 Q. Do you recall Mr. Payne approaching you
4 after the April 9, 2008 meeting and inquiring
5 about your concern?

6 MR. ZVENYACH: Let's do the compound --
7 let's avoid the compound question and start with
8 the first one.

9 Q. Do you remember him approaching you?

10 MR. ZVENYACH: Him, being Mr. Payne?

11 MR. McDANIEL: Yes.

12 MR. ZVENYACH: Do you recall?

13 THE WITNESS: Yes.

14 BY MR. McDANIEL:

15 Q. Do you recall him asking you any
16 questions?

17 MR. ZVENYACH: Do you recall?

18 A. Yes.

19 Q. What did he ask?

20 A. He asked me -- he asked me whether --
21 words to the effect of can you tell me what your

1 concerns are about this contract, which I found --
2 if I may say, which I found very puzzling because
3 I just spent two full rounds of questioning, with
4 him, expressing my concerns, you know, I mean,
5 more than a half of an hour expressing my concerns
6 about this contract, for the public record, on
7 video. It's a matter of record. He comes up to
8 me after the hearing and says, can you tell me
9 more about -- you know, and I remember my reaction
10 was, well, I just had a hearing on his subject. I
11 couldn't have been clearer about what my concerns
12 were. So that's what --

13 Q. So what else did you tell him?

14 MR. McDANIEL: For the record, I'm just
15 going to note that, when I ask a question,
16 Councilmember Graham looks to his counsel as if to
17 suggest to him he should do something about the
18 question. So if counsel thinks he should do
19 something, he will.

20 BY MR. McDANIEL:

21 Q. So is --

1 A. Well, I do that because so many of your
2 questions are countered to what I understand the
3 court order to be, which apparently you're not
4 abiding by.

5 MR. McDANIEL: Well, I think I am. We may
6 have some disagreement about that.

7 THE WITNESS: Well, that's why I'm doing
8 it.

9 MR. McDANIEL: Sure.

10 BY MR. McDANIEL:

11 Q. Well -- but let me ask you the question,
12 what did you tell him?

13 MR. ZVENYACH: Tell who?

14 MR. McDANIEL: We're only talking about
15 Mr. Payne in this conversation.

16 MR. ZVENYACH: So do you recall what --

17 A. I do. I said to him that, if he wanted --
18 the whole question, at this point, was whether or
19 not -- whatever the name of the company, and it
20 was various names, whether they were qualified to
21 win this contract. I was being called upon to

1 vote, under the existing process, on whether --
2 the contract was not final. In fact, it was not
3 approved in any sense of the word until the
4 council approved it. I have a vote on the
5 council, and my whole -- it's very clear from the
6 public record, I had questions of the
7 qualifications of the recommended bidder -- or the
8 recommended awardee of this contract and I said to
9 him that, if he wanted more information about what
10 this Warren C. Williams, Senior had done, in terms of
11 lottery experience, he should speak to Dottie Love
12 Wade because she worked at the Lottery Board in
13 the 1980s and she can tell him about it, that's
14 what I said.

15 Q. So you, at that point in time, did have
16 problems with Warren Williams' involvement?

17 MR. ZVENYACH: I object at this point and
18 point out that his concerns are within the
19 legislative sphere and it's protected by
20 legislative immunity and I instruct him not to
21 answer.

1 MR. McDANIEL: That would be fine if he
2 didn't just describe what the issue was.

3 MR. ZVENYACH: I'm instructing him not to
4 answer.

5 MR. McDANIEL: In the face of him already
6 describing what his problems were?

7 MR. ZVENYACH: Yes.

8 MR. McDANIEL: Okay.

9 BY MR. McDANIEL:

10 Q. So did you mention to Dottie Love Wade, on
11 the record in the council hearing that you
12 mentioned moments ago, or was that new
13 information?

14 MR. ZVENYACH: I'm sorry, I didn't
15 understand that question.

16 Q. Did you mention Dottie Love Wade on the
17 record, in the council hearing, that you
18 mentioned --

19 MR. ZVENYACH: I'm going to object on the
20 basis of legislative immunity. Again, the council
21 hearing is the subject of the legislative sphere;

1 it's beyond the Court's order at that point and I
2 instruct the witness not to answer.

3 Q. And so, when Mr. Payne had this
4 conversation with you after the hearing, was
5 anyone else present?

6 MR. ZVENYACH: Do you recall?

7 A. I don't recall anyone else being present.

8 Q. And you instructed him to go see
9 Ms. Wade -- I'm sorry, to contact Ms. Wade in
10 order to address the concerns that you thought he
11 may have had or that -- I'm sorry, let me rephrase
12 the question. You instructed him to go and
13 contact Dottie Wade for what purpose?

14 A. I --

15 MR. ZVENYACH: I believe he already
16 answered that question.

17 Q. You were about to clarify something?

18 A. Can I just say this, a member of the
19 council does not instruct the CFO to do anything
20 and so, you know, I suggested to him -- he came up
21 to me. He said -- asked me a question. I said,

1 if you want information, you know, contact her
2 because she worked there.

3 Q. And subsequent to that -- and just for the
4 record, you don't remember a young lady standing
5 with Mr. Payne at the time that you had this
6 discussion?

7 A. I don't. No, I don't.

8 Q. And subsequent to that -- and referred to
9 on page nine -- I'm sorry, paragraph nine, page
10 ten, where it says, at the bottom there, I,
11 subsequently met with Councilmember Graham,
12 meaning Mr. Payne, is representing that he
13 subsequently met with Councilmember Graham, his
14 then aide, Ted Loza, along with Cynthia Gross, an
15 OCFO staffer in his office. In that meeting,
16 Graham said he had a bone to pick with me. First,
17 do you remember meeting again with Mr. Graham, in
18 your office, with Mr. Loza and Ms. Gross?

19 A. I don't recall that.

20 Q. And likewise, you don't recall telling him
21 that you had a bone to pick with him?

1 A. I don't recall that statement.

2 Q. When you say, you don't recall it, you
3 mean to say that it may have happened, you just
4 don't remember that it did?

5 A. I mean to say, I don't recall.

6 Q. Are you saying it did not happen?

7 A. I have no recollection of this meeting or
8 that statement.

9 Q. Okay. It goes on to represent that
10 instead of telling me what it was he said, I've
11 discussed it -- I'm sorry, instead of telling me
12 what it was, he said, I've discussed it with
13 Gandhi and he'll discuss it with you, just know
14 that I'm not happy. Councilmember Graham did not
15 raise a single question about the procurement
16 process, the technical proposal of W2 Tech2I, the
17 price offered by W2 Tech2I or the ability of W2I
18 to meet the contract requirements. This
19 discussion appeared to be driven by concerns
20 outside of the legislative process and,
21 ultimately, imperiled my personal status. So did

1 you, in the weeks after the April -- or actually,
2 the month after the April 8th -- I'm sorry, the
3 7th or 9th meetings, have a subsequent meeting
4 with Mr. Gandhi in which you instructed him to
5 have a discussion with Mr. Payne?

6 MR. ZVENYACH: I'm sorry, I think I
7 understand the question, but I'm not sure if you
8 understand.

9 MR. McDANIEL: Fair enough. I'll rephrase
10 it again. It was unartful.

11 BY MR. McDANIEL:

12 Q. Between April 9th of 2008 and this date,
13 June 24, 2008, did you have any discussion with
14 Mr. Gandhi in which you gave him instructions
15 related to Mr. Payne?

16 A. I've never given any instruction to
17 Dr. Gandhi.

18 Q. Did you, between April 9th of 2008 and
19 June 24th of 2008, have any discussions with
20 Dr. Gandhi in which you described issues that you
21 had with Mr. Payne?

1 A. Yes.

2 Q. And when was that?

3 A. I think -- I'm not precisely certain, but
4 I think it may have been on April the 17th.

5 Q. Do you remember where that meeting was?

6 A. It wasn't a meeting; it was a telephone
7 call.

8 Q. And --

9 A. But I'm not sure of the date. Let me
10 emphasize that, I'm not sure of the date, but
11 there was a telephone conversation.

12 Q. And you think it -- around or about
13 April 17th, 2008?

14 A. Well, I'm -- please don't hold me to the
15 date, but I do know there was a telephone
16 conversation.

17 Q. Well, let me -- while we're talking about
18 that, let me ask you some questions about how you
19 communicate as a councilmember. Do you have an
20 official council e-mail address?

21 A. I do.

1 Q. And what is that official e-mail address?

2 A. It's J Graham at -- well, these days, it's
3 J Graham at DC Council dot US.

4 Q. And in and around 2008, was it the same or
5 was it different?

6 A. I believe it may have been different,
7 because there has been some changes to it, but --
8 because there was a time there was a longer
9 address, but I think it was about the same.

10 Q. Do you remember whether or not you
11 communicated, at all, with Dr. Gandhi, by e-mail?

12 A. I don't believe so. I don't believe I
13 did.

14 Q. Did you, during the period of 2008, the
15 year, calendar year 2008, have a personal e-mail
16 account?

17 A. I did.

18 Q. Do you remember what the personal e-mail
19 account address was?

20 A. Yes, I do.

21 Q. And what was that?

1 A. Jim at Graham one dot com.

2 Q. Did you ever use your personal e-mail
3 address to conduct official government business?

4 A. I used my personal e-mail account to send
5 e-mails that sometimes involved government
6 officials.

7 Q. Was there any prohibition against or had
8 you been instructed not to use your personal
9 e-mail address for official government business?

10 A. No.

11 MR. ZVENYACH: That's a compound question.
12 Can you break it up?

13 MR. McDANIEL: I don't believe it is, but
14 I'll ask it again.

15 BY MR. McDANIEL:

16 Q. Had you ever been instructed not to use
17 your personal e-mail address for government
18 business?

19 A. No.

20 Q. In connection with this litigation, has
21 anybody asked you to review either your personal

1 e-mail account or your official government e-mail
2 account?

3 A. I think we received a subpoena, didn't we,
4 from you or from --

5 Q. From counsel for Mr. Payne?

6 A. Yeah, it was on behalf of Mr. Payne, he
7 sent me a subpoena.

8 Q. Do you remember when you received that,
9 approximately?

10 A. No, I don't.

11 Q. When you received it, what did you do in
12 order to maintain the e-mails that you may have
13 had on your personal or government e-mail
14 addresses?

15 A. What did I do to maintain? I don't
16 understand the question.

17 Q. Well, after you received the subpoena, was
18 there any request of you to maintain e-mails from
19 a particular period?

20 A. I don't recall. I assume it would have
21 been in the subpoena.

1 Q. Right, but as you sit here today, you
2 don't recall anybody asking you to maintain
3 e-mails from your personal or government --

4 A. I --

5 Q. I'm sorry, just let me finish the
6 question. As you sit here today, you don't recall
7 anybody asking you to maintain e-mails from your
8 personal e-mail account?

9 A. Orally?

10 Q. Orally.

11 A. I don't recall anybody orally asking me to
12 do that. I think I may have seen it in the
13 subpoena. That's typically in subpoenas.

14 Q. Your best recollection of what was in the
15 subpoena was a mandate that you maintained the
16 integrity, if you will, of your personal e-mail
17 account?

18 A. I believe so.

19 Q. And the same would have been true for your
20 government e-mail account?

21 A. I believe so.

1 Q. And what efforts did you take in order to
2 maintain those items?

3 A. I maintained them.

4 Q. Did you -- after the receipt of the
5 subpoena, did you delete any e-mails?

6 A. No.

7 Q. Did you, after the receipt of the
8 subpoena, look for any e-mails between yourself
9 and Mr. Gandhi?

10 THE WITNESS: Was that listed in there?

11 MR. ZVENYACH: If you recall.

12 A. I don't recall who -- I do recall
13 searching for Payne's name. I do recall that
14 being requested. I'm not sure if Gandhi was
15 requested; I just don't recall. But I do remember
16 searching for Payne.

17 Q. And did you find any -- just so we're
18 clear. You're not concerned if you searched for
19 any e-mails related to --

20 A. I just don't recall. I would have
21 searched for whatever I was asked to search for; I

1 would have done that.

2 Q. I appreciate that. But as you sit here,
3 you don't recall searching specifically for
4 e-mails related to communications between yourself
5 and Mr. Gandhi?

6 A. I don't recall but, if the subpoena would
7 have asked for that, I would have done it.

8 Q. You just mean to say you would have been
9 in compliance, you just don't have any --

10 A. Absolutely.

11 Q. I'm sorry, just let me finish, just so we
12 have the record.

13 A. Sure.

14 Q. You don't have any independent
15 recollection of doing that search, but you
16 believe, if it was required, you would have done
17 it?

18 A. Yes, that's correct.

19 Q. And in the meeting that you said that you
20 had with Mr. Gandhi, where you expressed some
21 concerns about Mr. Payne, what did you say?

1 MR. ZVENYACH: Do you recall?

2 A. I do recall. I do recall what happened.

3 Q. What did you say?

4 A. And I don't -- I was concerned that
5 Mr. Payne may have contacted -- may have contacted
6 Dottie Love Wade in a way that I thought, you
7 know, was not what I was suggesting and I think I
8 expressed that to Dr. Gandhi.

9 Q. Did you -- and you think this was around
10 April 17th?

11 A. I'm not going to be held to the date
12 because I honestly don't recall the date. I
13 mentioned that earlier. I may not -- I just have
14 to be excused from the specific date, because I
15 don't recall the specific date.

16 Q. No. I understand, but you think, though,
17 it was --

18 A. I had a telephone conversation with
19 Dr. Gandhi.

20 Q. After the April 9, 2008 hearing?

21 A. Right, and I -- yes, after the 2000 --

1 Q. After the April 9, 2008 hearing?

2 A. Yes. Yes. Actually, I think the hearing
3 was April 7th.

4 Q. What was on April 9th?

5 A. I don't know.

6 Q. Was there a budget meeting or something of
7 that nature?

8 A. I don't know. The hearing was, I think,
9 April 7th.

10 Q. So it's your recollection that that
11 interaction that you had with Mr. Payne was on
12 April the 7th?

13 A. I believe so. It was the day of the
14 hearing. It was not separate.

15 Q. And after that, then -- after that
16 interaction with Mr. Payne, you had some phone
17 call or conversation with Mr. Gandhi --
18 Dr. Gandhi, correct?

19 A. That's true.

20 Q. And you communicated your concerns to
21 Dr. Gandhi?

1 A. I did.

2 Q. What did you hope to achieve by that?

3 A. I wanted him to know that -- that, you
4 know, I was concerned about what might have
5 happened, you know, as a result of my simply
6 saying, if you wanted to know more about, you
7 know, Warren C. Williams, Senior's experience with
8 the lottery, because it was Warren C. Williams'
9 experience with the lottery was being offered as
10 the basis for having qualifications, it wasn't
11 Junior, who had no lottery experience, I said, if you
12 want to know more about Warren C. Williams, Senior's
13 experience with the lottery matters, you might
14 want to speak to Dottie Love Wade who worked at
15 the lottery.

16 Q. But it was Junior that was connected with the
17 pending contract; isn't that right?

18 A. Not clear --

19 MR. ZVENYACH: Objection. It's protected
20 by legislative immunity.

21 Q. I'm just wondering why you would have been

1 worried about --

2 A. I never understood. I do want to answer
3 this. I never understood who had financial
4 interest in this contract and who didn't. I was
5 never privy to that, who had a piece of this and
6 who didn't have a piece of it.

7 Q. So it's your position that you didn't --
8 didn't know if it was Junior or Senior?

9 A. I had no idea and I had no details on that
10 whatsoever.

11 Q. And it's your position that you didn't
12 know if it was Junior or Senior up until the time that
13 it was rejected?

14 MR. ZVENYACH: Objection, protected by
15 legislative immunity, beyond the scope and I'm
16 going to instruct the witness not to answer.

17 Q. So you instructed Mr. Payne to contact
18 Ms. Wade about --

19 A. No. I suggested.

20 Q. You suggested that he contact Ms. Wade
21 about Senior, Warren Williams, Senior?

1 A. Right.

2 Q. And what was it that led you to have some
3 concern about what Mr. Payne would have done with
4 that information?

5 A. What gave me concern was that Dottie Love
6 Wade came to my office and suggested that the --
7 an arrangement and accommodation could be made,
8 involving her, over the lottery contract and I
9 said that was highly inappropriate for her to make
10 such a suggestion to me and that I had had no
11 contact with her whatsoever about the lottery
12 contract and so, she appeared, at that time, with
13 this accommodation, I think, was the word she used
14 and that led me to believe that something
15 inappropriate might have happened.

16 Q. An accommodation that would have resulted
17 in what?

18 A. Resulted in her being hired by the Greek
19 company, the name of which I can't even remember.

20 Q. Intralot?

21 A. Yes.

1 Q. And that would, in some way, shape, form
2 or fashion, affect whether they would receive the
3 contract?

4 A. Yes.

5 Q. Do you remember when that was?

6 A. No, but I think it was in April. I don't
7 remember the exact date right now.

8 Q. And you don't remember how close, if you
9 will, it was to the meeting we've been referring
10 to as either the April 7th or April 9th meeting?

11 A. It was after that.

12 Q. I understand that. You don't know how
13 long after it was?

14 A. It was a matter of days, I believe, a
15 matter of days after that.

16 Q. When Ms. Wade met with you, was there
17 anybody else present?

18 A. No.

19 Q. Did she tell you that Mr. Payne suggested
20 that she contact you or contact anybody with
21 Intralot?

1 A. I don't recall.

2 Q. Was that something that you would have
3 remembered? If she came to you and said that
4 Mr. Payne suggested that, you know, she contact
5 Intralot because her involvement may have some
6 affect on the contract, is that something that you
7 would remember?

8 A. I don't recall.

9 Q. No, I understand that you don't recall.
10 I'm saying, if it's that important, is that
11 something --

12 A. I don't know. I -- I tell you, I was very
13 upset at the suggestion that was being made, very
14 upset, and that's what I remember.

15 Q. Sure. But as you sit here now, under this
16 deposition and under oath, you don't have any
17 recollection of her making any connection of
18 Mr. Payne to that assertion, if you will?

19 A. I don't recall.

20 Q. And what did you do with that information
21 after Ms. Wade came to speak with you? What did

1 you do about that?

2 A. I believe, at that point, I called
3 Dr. Gandhi.

4 Q. And you told him that hoping that he would
5 do what with Mr. Payne?

6 A. I made no specific -- I don't recall
7 making any specific suggestion to him of what he
8 was to do, but I said I wanted him to know that
9 this had occurred and that I was very upset that
10 this would have occurred as part of a lottery
11 contract consideration. I had a vote on this
12 matter that had yet to be cast.

13 Q. And for someone to suggest that their
14 involvement with the contract may influence your
15 vote, would have been improper?

16 A. It would have been --

17 MR. ZVENYACH: I'm going to object at this
18 point. Can you either reread the question or
19 restate the question because it may lead into
20 legislative immunity. It's your choice.

21 Q. For someone to suggest to you that their

1 involvement with a contract or their potential
2 financial benefit from a contract should influence
3 your vote as it relates to the ratification, if
4 you will, of that contract, would have been
5 improper?

6 MR. ZVENYACH: Whether the statements,
7 itself, would have been improper?

8 MR. McDANIEL: Yes.

9 MR. ZVENYACH: If you recall.

10 A. I don't know if that was specifically
11 suggested, but I was extremely uncomfortable with
12 the conversation, and had such a suggestion been
13 made, it would have been illegal.

14 Q. Right. More than improper, it would have
15 been illegal.

16 A. And I heard enough, where I said, whoa,
17 enough, you know. The conversation ended fairly
18 quickly.

19 Q. And you're sure that this was sometime in
20 April?

21 A. Uh-huh.

1 (The witness nodding head in the
2 affirmative.)

3 Q. And after your conversation with
4 Dr. Gandhi, related to that interaction with
5 Ms. Wade, what, if anything, did you do about
6 that?

7 A. Nothing further.

8 Q. You didn't contact anyone else about the
9 contact that you had with Ms. Wade and Mr. Payne?

10 A. I don't believe I did.

11 (Deposition Exhibit Number 9 was marked
12 for identification.)

13 BY MR. McDANIEL:

14 Q. Mr. Graham, I'm going to show you a group
15 of documents that I'm going to note as Deposition
16 Exhibit Number 9.

17 CERTIFIED PORTIONS

18 MR. ZVENYACH: At this point, I'm just
19 going to note that, if this is the so-called
20 Andary report, we ask that this portion of the
21 deposition be kept confidential. It's indicated

1 that it's confidential subject to court order and
2 we'd ask that from here, until we're done with the
3 Andary report, be maintained as confidential.

4 MR. McDANIEL: I'm not certain -- I
5 understand the objection and I'm not certain how
6 long the report will remain confidential, as we've
7 had discussions with the District regarding the
8 designation --

9 MR. ZVENYACH: I'm not actually speaking
10 about the protective order. I'm talking about
11 until the report itself is made publicly
12 available, I would ask that the report and any
13 communications or concerns about the report will
14 be kept confidential as a whistle-blower matter.

15 MR. McDANIEL: I understand. As a matter
16 of practicality, it's already public, but --

17 MR. ZVENYACH: I understand that, but
18 until the report is officially made public by the
19 District of Columbia --

20 MR. McDANIEL: I understand the objection.

21 MR. ZVENYACH: I don't want to hear the

1 objection --

2 MR. McDANIEL: I'm sorry.

3 MR. ZVENYACH: -- I want to hear that
4 we're agreed that we're going to maintain
5 confidentiality under the protective order and
6 that we keep this portion of the deposition
7 confidential until we've had an opportunity to
8 review it.

9 MR. McDANIEL: We won't agree to that. We
10 can agree that insofar as the Andary report
11 remains a part of the protective order that we
12 can, in essence, seal the matter for that purpose;
13 but once we've agreed or if we agree or if the
14 Court, at any point in time, determine that
15 there's no need for it to be subject to the
16 protective order --

17 MR. ZVENYACH: I'm not concerned about the
18 Andary report. I'm concerned about this portion
19 of the deposition.

20 MR. McDANIEL: Right. We wouldn't agree
21 to that. So that may be an issue that you might

1 want -- we can certify, for the Court's
2 consideration.

3 MR. ZVENYACH: Let's certify it for the
4 Court's consideration.

5 BY MR. McDANIEL:

6 Q. So Mr. Graham, I have passed to you what
7 has been marked as Plaintiff's Exhibit Number 9.
8 I'm going to ask you to take a peek at that and
9 ask you to review it.

10 A. I have two copies of it here. Should I
11 have two copies?

12 Q. Yes, you should have two copies of it.

13 A. Okay. I have two copies here.

14 Q. Have you seen this document before?

15 A. I have.

16 Q. When did you first see it?

17 A. In February.

18 Q. Of what year?

19 A. Of this year.

20 Q. And who showed it you?

21 A. Jo-Ann Armao.

1 Q. And who is Jo-Ann Armao?

2 A. She works for the Washington Post
3 editorial department.

4 Q. Did she ask you some questions about it?

5 A. She did.

6 Q. And did you give her some responses?

7 A. I did.

8 Q. What did she ask you?

9 A. I don't recall the specifics.

10 Q. What did you tell her?

11 A. I don't recall the specifics.

12 Q. You don't remember exactly what you said?

13 (Witness nodding head in the negative.)

14 Q. On the first page of this document, with a
15 page number at the bottom 2045, do you see that?

16 A. Uh-huh.

17 MR. ZVENYACH: I'm sorry, the first page
18 is 2041.

19 MR. McDANIEL: I'm sorry, it should be
20 2045. The number is being covered.

21 MR. ZVENYACH: So they're out of order?

1 MR. McDANIEL: Yeah, they are out of
2 order.

3 MR. ZVENYACH: Okay.

4 BY MR. McDANIEL:

5 Q. This first page is 2045, but has the
6 exhibit sticker over it. Do you see, at the
7 bottom, the paragraph there where the drafter
8 writes, I note that Councilmember Jim Graham asked
9 to be briefed on the results of this
10 investigation. Please let me know when and under
11 what circumstances should a briefing be conducted.
12 Let me ask you, first, do you remember when this
13 investigation was being conducted?

14 A. No.

15 Q. Do you remember making a request of the
16 investigator to be briefed on the findings?

17 A. I don't recall that.

18 Q. You don't remember that, at all?

19 A. No.

20 Q. Do you remember if you were ever told
21 about the findings in the report?

1 A. I don't believe I was ever told about the
2 findings in the report.

3 Q. Do you know who Robert Andary is?

4 A. Somewhat.

5 Q. Who do you understand him to be?

6 A. He's the director of the Office of
7 Investigation, I guess, for the OCFO.

8 Q. And what is that agency, to the best of --

9 A. The Office of the Chief Financial Officer.

10 Q. I'm sorry, the O --

11 A. I assume it's an internal office in OCFO
12 that looks into various things relating to
13 integrity and oversight.

14 Q. Do you know how it is that Mr. Andary came
15 to be doing this investigation?

16 A. It was not at any suggestion by me.

17 Q. So you say that to say that you didn't
18 make any report of any allegations regarding
19 Mr. Payne to the OIO's office?

20 A. No, I did not. I made no report to the
21 OIO office. I didn't know the OIO office existed.

1 Q. Did you make any report, at all, to anyone
2 in the OCFO's outside of what it is that you
3 reported to Mr. Gandhi?

4 A. No.

5 Q. So at page 2041, which is the second page
6 of this --

7 A. Uh-huh.

8 Q. -- where it says, this investigation was
9 undertaken as a result of an allegation by D.C.
10 Councilmember Jim Graham regarding the Office of
11 the Chief Financial Officer, OCFO officer,
12 contracting officer, Eric Payne. What do you
13 understand that to be referring to?

14 A. I don't know what it refers to, because I
15 had no -- I had no -- my only contact on this
16 issue was with Dr. Gandhi in one telephone
17 conversation and, during that conversation, I did
18 not request any action by him.

19 Q. And the only parties to that --

20 A. Specific action by him.

21 Q. I'm sorry, the only parties to that

1 conversation would have been you and Dr. Gandhi?

2 A. That's correct.

3 Q. The bottom of that first paragraph where
4 it says, the investigation did not implicate
5 Mr. Payne in any impropriety and exonerated him of
6 the allegations made by Councilmember Graham, were
7 you informed of the fact that there was an
8 official investigation and that Mr. Payne had been
9 exonerated?

10 A. No, I was not.

11 Q. In connection with this investigation, did
12 you ever meet with Mr. Andary?

13 A. I did.

14 Q. Do you remember when that was?

15 A. It was in 2008. It would have been
16 sometime probably in June, summer of 2008, because
17 he did interview me.

18 Q. And when he interviewed you, where were
19 you?

20 A. I believe in my office.

21 MR. ZVENYACH: I just want to be clear

1 about one thing, because I've been -- so
2 originally, there were two documents attached and
3 being out of order, at the top, there's one that
4 says, draft. It looks like 2046, what would have
5 been 2045 through 2049, were draft and then
6 there's one that says 2041, 2044. I haven't
7 reviewed these two documents. Are they the same
8 document?

9 MR. McDANIEL: Okay. We're going to ask
10 some questions about that. Just so you know, one
11 is -- and I'll explain it. One is a draft and
12 then one is a revision of the draft.

13 MR. ZVENYACH: I see. So 2041 through
14 2044, is that the draft or not the draft? That's
15 the one that's not marked draft?

16 MR. McDANIEL: That is the final draft.

17 MR. ZVENYACH: And then, 2045, which is on
18 the front, through 2049 is the draft?

19 MR. McDANIEL: That's correct.

20 MR. ZVENYACH: Okay. I understand.

21 BY MR. McDANIEL:

1 Q. So Mr. Graham, when you met with
2 Mr. Andary, do you recall if anyone else was
3 present?

4 A. I think there may have been. He may have
5 brought someone with him, but I don't believe it
6 was anyone from my staff.

7 Q. Do you remember who he brought with him?

8 A. Oh, I do remember. It was David Tseng.

9 Q. Who is David Tseng?

10 A. He is some kind of assistant to the CFO.

11 Q. And when you had that meeting with
12 Mr. Andary, what did he do?

13 A. You know, I really -- I know the meeting
14 occurred, but I don't recall any of the specifics
15 of the meeting.

16 Q. Do you recall any of the questions that he
17 asked you?

18 A. Well, it would be questions about what I
19 had brought to the attention of Dr. Gandhi, I'm
20 quite sure of that.

21 Q. Anything beyond that or was that the

1 entire scope of --

2 A. I think it was pretty much focused in on
3 that, but I have never had any report of that
4 interview. I don't know whether there's any notes
5 that were taken. I don't know anything about
6 that.

7 Q. And you, in essence, informed Mr. Andary
8 of what it is that you had informed Mr. Gandhi
9 about; is that right?

10 A. He knew about that, I think, by the time
11 he came to speak with me.

12 Q. And if you recall, do you remember telling
13 Mr. Andary that Ms. Wade came to see you the day
14 after you had your interaction with Mr. Payne?

15 A. I believe I said that. In hindsight, that
16 was an error and -- but at the time, that was my
17 recollection.

18 Q. And so, you say that in hindsight that was
19 an error because you know now it would have been
20 the day after?

21 A. It was a few days later, beyond that.

1 Q. And how do you know that now?

2 A. Because I -- my memory had been refreshed
3 and it was not the day after the hearing. It was
4 a few days later.

5 Q. When you say your memory has been
6 refreshed, was there anything that was used to
7 refresh your recollection on that --

8 A. I think I recall looking at my calendar
9 and I'm relatively satisfied that the calendar is
10 accurate. I had recalled that she had come
11 unannounced at my office and spontaneously. That
12 was my best recollection at the time or that's
13 what I thought at the time, but since then, I have
14 seen that there was actually an appointment on --
15 later than that, a few days later. I didn't
16 consider that to be of great consequence, however,
17 to what we were discussing. In fact, I saw it of
18 no consequence.

19 Q. But you realize now that the investigator
20 did think that it was of some consequence?

21 A. For reasons best known to him, he thought

1 it was consequential. I thought that the
2 substance remained the same, because it was still
3 the same discussion, whether it happened the day
4 after or a few days thereafter, it was the same
5 discussion, and that's what concerned me. It
6 wasn't the timing. I didn't put great amount
7 of -- I didn't put a great amount of importance to
8 the timing. I think I thought, at the time, it
9 was the substance of what was said that bothered
10 me.

11 Q. After your conversation then with
12 Mr. Andary, did you have any further discussions
13 with Mr. Gandhi?

14 A. No.

15 MR. ZVENYACH: I just want to clarify the
16 question. You mean, with respect to Mr. Payne?

17 THE WITNESS: Right.

18 MR. McDANIEL: With respect to Mr. Payne
19 and, specifically, in this context, with respect
20 to the investigation that was being done by
21 Mr. Andary.

1 A. Following the conversation with
2 Mr. Andary, whenever that occurred, it was in the
3 summer, I don't believe I had any further
4 discussion with anyone about this until Jo-Ann
5 Armao showed me this report.

6 Q. Do you remember whether or not Ms. Armao
7 showed you the final version of the Andary report
8 or the draft version?

9 A. I don't recall.

10 Q. You know there to have been two versions
11 of it --

12 A. I only know that now and I should say
13 that, earlier -- a couple of days ago, Colby Kane,
14 who I guess you're in regular communication with,
15 told me that he had a copy or he had been given
16 content from the draft. So that was my first
17 notice that there was two separate documents.

18 Q. For the record --

19 A. So prior to then -- prior to then, I have
20 had no knowledge of two versions.

21 MR. McDANIEL: For the record, I'm not in

1 regular contact with Mr. Kane. He is resourceful,
2 I'm sorry.

3 THE WITNESS: I guess we're not able to
4 ask questions?

5 BY MR. McDANIEL:

6 Q. Those numbers that are at the bottom of
7 the document, do you remember if those, what are
8 called Bates numbers, were on the document that
9 Ms. Armao showed you?

10 A. You know, I honestly don't remember. I
11 don't remember what was on the document.

12 Q. Are you familiar with the fact that it was
13 the Attorney General's Office that released this
14 document publically?

15 A. In February, I believe it was released by
16 the CFO, after consultation with the D.C. Attorney
17 General, but I don't know the technicalities of
18 it, but that was months ago this was released,
19 whatever it was.

20 Q. Do you remember, at any point in time,
21 asking that you or your report, reporting on that

1 issue, remained confidential?

2 A. I think that was discussed with the
3 interview with Andary and I think Andary said that
4 I would be a confidential source.

5 Q. It is your recollection that he suggested
6 that you would --

7 A. I believe so.

8 Q. I'm sorry, let me finish the question.

9 A. I don't think that would be something that
10 I would have raised.

11 Q. I'm sorry, we have to, for the record, not
12 speak over each other and I'll try not to talk
13 when you're talking if you'll try to do the same.
14 So my question was, whether or not you remembered
15 whether or not the request for confidentiality was
16 something that you requested or something that
17 Mr. Andary offered?

18 A. My best recollection is it's something
19 that he had mentioned, because being trained in
20 this area, I think it was something that he -- an
21 assurance that he gave, which at this point, this

1 had been moved to a level that, you know, whenever
2 that interview occurred -- whenever that interview
3 occurred, there were weeks separating it from the
4 conversation with Dr. Gandhi and I remember being
5 a little bit surprised that it was now at this
6 level, that something formal was happening. Do
7 you know what I'm saying?

8 Q. Well, what did you expect to happen when
9 you made that statement to --

10 A. I thought there might have been an inquiry
11 and a response, but I never got any response up
12 until Mr. Andary came to my office, that's the
13 only thing I ever heard.

14 Q. You thought there might be some inquiry
15 and a response to what you --

16 A. More informal.

17 Q. -- of Mr. Payne's --

18 A. That maybe somebody would have asked the
19 question and come back to me and said, you know,
20 here are the results of the question.

21 Q. Let me ask you this. Did you have any

1 discussions with the CFO or any other persons
2 regarding the release of the report?

3 A. That would have occurred in February; is
4 that what you're referring to, this year's release
5 of the report?

6 Q. The release of the report, period.

7 A. I believe David Tseng came to me and said
8 that they were going to release it and, of course,
9 I just found out that there was a report. So it
10 was, oh, okay, and I believe he gave me the
11 courtesy of coming to my office to say he was
12 going to release it.

13 Q. And did you have a position, one way or
14 the other, as to whether it should be released?

15 A. Well, I think, at that time, I looked at
16 the document and I saw the words confidential
17 source, so I think I may have, as an attorney,
18 raised a question, is this subject to release.

19 Q. So it's your position that it didn't have
20 anything to do with the positions that Mr. Andary
21 took regarding your activity?

1 A. No. No. No. I mean, I think that, for
2 me, it was just a label -- confidential source is
3 a basis for not publically disclosing something.
4 I think I was aware of that, so I may have raised
5 that legal question.

6 Q. But you were certainly, at that point in
7 time, aware of the fact that Mr. Andary prescribed
8 some malfeasance, if you will, to you?

9 A. Malfeasance?

10 Q. Malfeasance.

11 A. I don't think there's any suggestion
12 anywhere here of malfeasance.

13 Q. Okay. Well, let's look at --

14 A. I don't know how you're using the word,
15 but I think I know what it means and no one has
16 suggested malfeasance.

17 Q. Okay. Let's look at the report, at page
18 2046.

19 A. Uh-huh.

20 MR. ZVENYACH: And this is the draft
21 report?

1 MR. McDANIEL: This is draft report.

2 BY MR. McDANIEL:

3 Q. Dated July 29, 2008.

4 A. Uh-huh.

5 Q. From Robert G. Andary, executive director
6 of Office of Integrity and Oversight, report of
7 investigation 2008, Number 0154. The last -- or
8 the first paragraph there with Bates stamp number
9 2046, on the bottom of the first paragraph, says,
10 moreover, the investigation revealed how highly
11 politicized the lottery contract has become and
12 revealed inappropriate actions by Mr. Graham, with
13 respect to council's consideration of the lottery
14 contract. Do you see that portion of the report?

15 A. I do.

16 Q. Do you agree that that suggests, at least
17 in Robert Andary's report and from his position,
18 that there was some inappropriate actions on your
19 part related to the lottery contract?

20 MR. ZVENYACH: I'm going to object on the
21 basis of relevance. I'm not sure how this has

1 anything to do with the scope of the Court's
2 order.

3 MR. McDANIEL: Are you instructing him not
4 to answer?

5 MR. ZVENYACH: I guess I'd like
6 clarification. Is your question related the
7 Court's order?

8 MR. McDANIEL: The question is related to
9 the report and whether or not this language had
10 any affect on Mr. Graham's position as to whether
11 or not it should be released or not.

12 MR. ZVENYACH: I guess, I'm giving some
13 latitude here with respect to your questions and
14 I'm not sure how any of that relates to
15 Mr. Payne's demotion or termination, considering
16 that a postdated is to the motion and termination.

17 MR. McDANIEL: I understand that, but the
18 context of this, discussing what happened, in and
19 around that time in the report.

20 MR. ZVENYACH: I want to be very clear.
21 The Court's order says, he may depose

1 Councilmember Graham and Mayor Gray as to
2 communications each had with the CFO relating to
3 Payne's demotion and termination and I'm not sure
4 how this relates to limited scope as set forth in
5 the May 14th order and the June 1st order.

6 MR. McDANIEL: There is some context to
7 what we're alleging Mr. Graham was responsible
8 for, so it just didn't happen in a vacuum. It
9 happened --

10 MR. ZVENYACH: It happened in February of
11 2012.

12 MR. McDANIEL: Sure. It happened for a
13 reason and what we're saying is that we're
14 entitled to establish the reason why Mr. Graham
15 might have exerted the influence in which he did.
16 So --

17 MR. ZVENYACH: Again, I want to be very
18 clear here. I'm going to give you latitude to ask
19 questions that are related to the scope, but your
20 question here is, whether you thought Mr. Andary
21 had basis to think that there was impropriety of

1 the respectful lottery contract and I'm telling
2 you that that is outside of the scope.

3 MR. McDANIEL: No. I think I was asking
4 him whether or not he was aware that this
5 statement was in Mr. Andary's report --

6 MR. ZVENYACH: And --

7 MR. McDANIEL: Hold on for a second. Was
8 in Mr. Andary's report and if that had any affect
9 on whether or not he wanted it released or not,
10 that's what I asked.

11 MR. ZVENYACH: And my response to that,
12 and I'm going to instruct the witness not to
13 answer the question, that that is beyond the scope
14 of the Court's order.

15 BY MR. McDANIEL:

16 Q. Well, let me ask you this, Mr. Graham, at
17 page 2047 -- I'm sorry, before we move on to that,
18 do you recognize that the language I just read to
19 you from the July 29th, 2008 report, with the
20 Bates stamp 2046, that language that I just read
21 is not in the final report dated the same day,

1 July 29, 2008, with the Bates stamp number 2041?

2 A. I'm just seeing this document for the
3 first time and so, I haven't had an opportunity to
4 compare them.

5 Q. Well, you've seen, at least --

6 A. I haven't seen the draft document
7 previously.

8 Q. So it's your position that the document
9 that you were shown by Ms. Armao was the final
10 document and did not include the language that we
11 just discussed?

12 A. I believe that's true, but I don't recall
13 precisely.

14 Q. So it could have been the draft copy?

15 A. It could have been the draft copy, but I'm
16 not sure.

17 Q. And the draft copy seems to suggest some
18 improper action on your part by Mr. Andary?

19 MR. ZVENYACH: I've already objected to
20 that and instruct the witness not to answer.

21 Q. Well, let's go on to page 2047, where it

1 starts with investigative findings, paragraph
2 number one. It says, Mr. Graham was not candid in
3 his description of his conversation with Eric
4 Payne in which Graham suggested that Payne contact
5 Dottie Love. Is it your testimony, sir, that when
6 you were shown this document by Ms. Armao that
7 that information was not included?

8 MR. ZVENYACH: I'm going to stop here.
9 He's not sure which document he'd seen.

10 A. I'm not sure which document I saw. Is
11 this different than the other document?

12 Q. Yes, sir. If you'll compare --

13 A. Well, having just seen this for the first
14 time today, I haven't made any comparison between
15 the two.

16 Q. Sure. Well, I'm going to ask you to do it
17 now then. Let's look at 2047 and 2042, if you
18 would look at them side-by-side.

19 MR. ZVENYACH: And we're looking at 2042
20 and 2047, side-by-side.

21 MR. McDANIEL: Thank you very much.

1 BY MR. McDANIEL:

2 Q. Do you see the first sentence, in
3 paragraph one, under investigative findings?

4 MR. ZVENYACH: The first sentence. Okay.
5 I'm looking at 2047, the first sentence.

6 MR. McDANIEL: I'm really asking
7 Mr. Graham and, if he could respond for the
8 record, that would be great.

9 MR. ZVENYACH: Okay. I'm just letting the
10 record be clear.

11 THE WITNESS: Okay. I see the two.

12 MR. McDANIEL: We can depose you next
13 weekday.

14 MR. ZVENYACH: That's fine.

15 BY MR. McDANIEL:

16 Q. Mr. Graham, so 2047 and 2042, do you see
17 there that the first sentence from 2047 is not
18 included on 2042?

19 A. Yes, I see that it's different.

20 Q. All right. Are -- your testimony is that
21 you're not sure which one of these documents you

1 actually were shown by Ms. Armao?

2 A. I'm reasonably certain that I'm seeing the
3 draft for the first time.

4 Q. And at the bottom there of that same page,
5 under investigative findings, if you would look
6 there, at 2047, where the underline portion -- I'm
7 sorry, where the bottom paragraph starts with
8 therefore.

9 A. Uh-huh.

10 Q. The draft copy reads, therefore, it
11 appears that Graham did not reveal to me that his
12 suggestion to Eric Payne to call Ms. Wade was
13 motivated by Graham's opposition to the W2 Tech2I
14 contract award. Graham seems not to want to
15 appear to be involved in behind the scenes efforts
16 to award the contract to W2 Tech2I. And the next
17 page goes on to say, when, in fact, Graham is
18 using the controversy to promote his own political
19 agenda. See finding three below. This also
20 suggests a motive for Graham asking for
21 confidentiality in the matter. There, he suggests

1 that you requested it, correct?

2 A. Uh-huh.

3 Q. Although Graham already discussed the
4 matter with Dr. Gandhi, Graham now wants to act
5 behind the scenes to bring additional pressure on
6 those responsible for the lottery contract award,
7 and you'll note that that is not in the final
8 draft at page 2042, Bates stamped; is that right?

9 A. It doesn't appear to be.

10 Q. So again, your representation is that you
11 hadn't seen that draft copy before, correct?

12 MR. ZVENYACH: He's answered that
13 question.

14 A. Yes, that's right.

15 MR. McDANIEL: Well, he read something
16 different now, Dave, so he might remember now.

17 A. No, I've never seen this language before.

18 Q. And you would remember if you saw that
19 language, right?

20 A. I think I would remember if I saw this
21 language.

1 Q. Because here, number one, it suggests that
2 you asked for confidentiality.

3 A. Uh-huh, that's what this suggests, right.

4 Q. And that you were making the report about
5 Mr. Payne not because you were concerned about
6 Dottie Wade, but because you wanted to apply more
7 pressure to Mr. Payne to rebid the contract.

8 MR. ZVENYACH: I would object, but --

9 A. Which I take strenuous objection to.

10 Q. Okay.

11 A. I really do. Because, you know, I -- and
12 let's be very clear about this. You know, I had a
13 reaction to Dottie Payne coming in -- Dottie Wade
14 coming into my office and suggesting what she
15 suggested at that time. I found it very
16 repulsive. You know, the only person I mentioned
17 Dottie Love Wade to was in a recent conversation
18 that I had with Mr. Payne. You know, at that
19 point, it may have been the same day, it certainly
20 was the next day, if not later, you know, I called
21 Dr. Gandhi, personally, and said how upset I was

1 about what had happened. Rather than
2 investigating what the real problem was, which is
3 somebody coming to me and suggesting that I should
4 vote a particular way in exchange for a particular
5 favor, rather than investigating that, somehow
6 Mr. Andary turns this around. You know, he leaves
7 that investigative inquiry entirely, by the way,
8 and if you read on, you'll see relevant paragraphs
9 to that point, banters that and somehow turns this
10 to me and I never called for an investigation. I
11 had no idea there was an Office of Investigation.
12 I never heard the word Andary. I had never done
13 any of that and let's be very clear about this. I
14 didn't call and say, you've got to investigate
15 Payne because Payne is a bad guy, none of that
16 happened. You follow what I'm saying?

17 Q. I do.

18 A. So I simply shared with Dr. Gandhi my
19 concerns about what possibly be -- might be a link
20 here and then, from that, came all this.

21 Q. Sure. Since we're talking candidly, it's

1 your understanding that, at least, the
2 representations that are made here, that there was
3 some impropriety based upon -- and you can object
4 in a minute, based upon, not only what he got from
5 you, but also what he got from the Williams's?

6 MR. ZVENYACH: I'm going to object.

7 A. Well, he --

8 MR. ZVENYACH: I'm going to object,
9 Councilmember. This is again --

10 Q. Councilmember, if you want to answer the
11 question, you can.

12 A. No, I'm going to have to follow my advice.

13 Q. Are you sure? This is --

14 A. One of the things you're asking me to
15 comment on is Andary's mental processes, because
16 this was his draft report. You know, I have
17 drafted things that I later changed, you know, for
18 various and sundry reasons.

19 Q. Right. We're not talking about --

20 A. This is his final report.

21 Q. We're not talking about that, though.

1 A. I never saw any of them.

2 Q. Sure. And we're not talking about commas
3 or punctuation or anything --

4 A. No, no, but he changed this.

5 Q. We're talking about the substance, though.

6 A. But he changed this.

7 Q. Sure. But let me ask you the question,
8 because the substance is the problem for you,
9 right?

10 A. No, the substance is not the problem for
11 me.

12 Q. Well, no, because now, he's saying --

13 MR. ZVENYACH: I'm going to object to the
14 line of questioning.

15 Q. Mr. Graham, if you want an opportunity to
16 answer these questions, here it is, because the
17 allegation is that you met with the Williams's and
18 the Williams's came to you to talk to you about
19 their involvement with the lottery contract --

20 A. No. No. No. No.

21 Q. Please let me just finish.

1 A. No. No. No. No.

2 Q. The lottery contract --

3 A. That's not in here.

4 Q. It is and I'll show it to you.

5 MR. ZVENYACH: Show it to him.

6 Q. And that you said to them, if you want my
7 support in the lottery contract, what you have to
8 do is get off of the Metro contract?

9 MR. ZVENYACH: I object. It's on the
10 basis of legislative immunity. It's beyond the
11 Court's order of May 14th and June 1st. I'm
12 instructing the witness not to answer the
13 question.

14 Q. Right. And you're aware of those
15 allegations, right?

16 MR. ZVENYACH: I'm instructing the witness
17 not to answer the question.

18 Q. And now, you don't want to talk about the
19 Williams's, at all?

20 MR. ZVENYACH: I instructed the witness
21 not to answer the question. Next question.

1 Q. Did you meet with the Williams's? Did you
2 have a meeting with them.

3 MR. ZVENYACH: At any point?

4 Q. Yes, did you meet with --

5 MR. ZVENYACH: Have you ever met with the
6 Williams's?

7 A. Yes.

8 Q. Did you talk with them about their
9 involvement with the contract?

10 MR. ZVENYACH: Objection on the basis of
11 legislative immunity. It's beyond the scope of
12 the Court's order and I'm instructing the witness
13 not to answer the question.

14 Q. When you met with them, who was there?

15 MR. ZVENYACH: Objection. Renewed. I'm
16 instructing the witness not to answer.

17 MR. McDANIEL: He's already said he had a
18 meeting with them. I'm just asking who --

19 MR. ZVENYACH: I've instructed him not to
20 answer the question.

21 Q. You don't want to say who was there?

1 MR. ZVENYACH: Object. Next question.

2 Q. When was the meeting that you had with
3 them?

4 MR. ZVENYACH: Object. Next question.

5 MR. McDANIEL: You're going to let him say
6 he had a meeting and not answer any questions
7 about the meeting?

8 MR. ZVENYACH: You've asked about whether
9 it was the lottery contract meeting and, again,
10 I've objected on the basis of legislative
11 immunity; it's beyond the scope. If you want to
12 ask him something unrelated to the lottery
13 contract, if you want to ask him something related
14 to Mr. Payne, you can do so.

15 BY MR. McDANIEL:

16 Q. Do you want to say when the meeting was or
17 not, no?

18 MR. ZVENYACH: Objection. If there's a
19 question about Mr. Williams or Mr. Payne, I'll
20 allow it.

21 Q. Well, just so we understand each other,

1 the implication -- and if you want to ask the
2 question, you can. If you don't want to, at the
3 advice of your counsel, then don't. The
4 implication is that you were using your position
5 to control or exercise influence over the lottery
6 contract.

7 MR. ZVENYACH: There's no question.

8 MR. McDANIEL: I know it's not. So I'm
9 giving you the context of what these questions are
10 about.

11 MR. ZVENYACH: Okay. Well --

12 MR. McDANIEL: And the representation is
13 that, in the effort to exercise undue influence
14 over these contracts, as a councilmember, you
15 suggested that the Williams's get off another
16 contract in support of your position on the
17 lottery contract --

18 MR. ZVENYACH: Objection, as to --

19 Q. -- and the way that that ties in here is
20 because Mr. Payne was responsible, in some way,
21 shape, form or fashion, for the rebid or the

1 decision not to rebid the contract.

2 MR. ZVENYACH: Thank you for your
3 statement, Counsel. That's not a question. Next
4 question.

5 Q. So you don't desire to answer any
6 questions about that?

7 MR. ZVENYACH: I've objected and
8 instructed the witness not to answer any questions
9 about the lottery contract or anything beyond the
10 scope of the Court's order.

11 Q. Did you have any discussion with anybody
12 from the OCFO's office about Mr. Payne's refusal
13 to rebid the contract?

14 A. No.

15 Q. Did you have any discussions, at all, with
16 anybody from the OCFO's office about the rebid
17 process, at all?

18 MR. ZVENYACH: Objection, on the basis of
19 legislative immunity and it's beyond the scope of
20 the Court's order. Instructing the witness not to
21 answer. Next question.

1 Q. At page 2048 --

2 MR. ZVENYACH: Again, this is the draft
3 that he's indicated he has not seen before?

4 MR. McDANIEL: Yes.

5 Q. In comparison to page 2043, starting at
6 the top of that page, in the draft portion, I'm
7 asking you to look at the last paragraph -- I'm
8 sorry, the last sentence of the first full
9 paragraph, which is number two; do you see that
10 there?

11 MR. ZVENYACH: Do you see it?

12 A. It's crazy.

13 Q. Do you see that there?

14 A. Yes.

15 MR. ZVENYACH: Do you see the sentence?

16 Okay.

17 Q. Indulge me one second. It says there
18 that -- actually, in both drafts it says that
19 Graham was not happy with the contact from Wade
20 and called Dr. Gandhi to complain about Payne,
21 that's in both versions, correct?

1 MR. ZVENYACH: I'm sorry, one more time.

2 Q. Graham was not happy --

3 MR. McDANIEL: It might take a little bit
4 to find it. Let me show you.

5 THE WITNESS: It's different. It's
6 different.

7 MR. McDANIEL: At 2043, it would be --

8 THE WITNESS: There it is, Graham was not
9 happy with --

10 MR. ZVENYACH: Okay. And where is it in
11 the other one?

12 MR. McDANIEL: At 2048.

13 MR. ZVENYACH: I see, somewhere in
14 paragraph two.

15 BY MR. McDANIEL:

16 Q. So you see the modification already,
17 because the paragraphs are different, but in the
18 draft copy it says, one must question Graham's
19 motives and complaining to the head of Payne's
20 agency based solely on an assumption that was
21 based solely on a coincidence of timing.

1 MR. ZVENYACH: Objection. Relevance.

2 This is -- it appears to be beyond the scope of
3 the Court's order.

4 Q. Do you see that language was not included
5 in the final draft?

6 MR. ZVENYACH: Which language?

7 MR. McDANIEL: The, one must question
8 language.

9 MR. ZVENYACH: Where is that, in the draft
10 or in the final?

11 MR. McDANIEL: That would be in the draft.

12 MR. ZVENYACH: So the question is whether
13 that's in the final?

14 MR. McDANIEL: Right.

15 MR. ZVENYACH: Do you know?

16 THE WITNESS: I don't know. I haven't
17 studied these documents. Why don't you ask Andary
18 why he changed it.

19 MR. McDANIEL: Well, we already deposed
20 him. This is your deposition.

21 THE WITNESS: Can we see the deposition?

1 MR. McDANIEL: You can look at it if he'll
2 show it to you.

3 THE WITNESS: Who will show it to me?

4 MR. McDANIEL: Your counsel.

5 THE WITNESS: Oh, you have the Andary --

6 MR. ZVENYACH: I don't have the Andary
7 report.

8 THE WITNESS: I'd like to see it.

9 MR. McDANIEL: We'll get it to you in a
10 little bit.

11 THE WITNESS: Because you should ask
12 Andary why he changed it from draft to final.

13 MR. McDANIEL: I'm going to ask you, in a
14 minute, why he would have done that.

15 THE WITNESS: I had no contact. I can
16 anticipate your question.

17 MR. McDANIEL: All right.

18 THE WITNESS: I had no contact. I had no
19 idea there was any report. Nobody had briefed me
20 on a report. Nobody showed me a draft. No one
21 showed me a final. All of this -- none of this I

1 saw until Jo-Ann Armao showed it to me in February
2 of 2012. I can anticipate your question.

3 BY MR. McDANIEL:

4 Q. All right. So it wasn't you and you don't
5 know if it was Gandhi that made the request?

6 A. I have no idea -- I didn't know these
7 existed. I didn't know the draft existed until
8 two days ago when your friend Colby Kane told me.

9 Q. Whose friend, Mr. Payne's friend?

10 A. Right.

11 Q. You know them to be friends?

12 A. I must assume somebody is feeding him
13 information. Why wouldn't it be you?

14 Q. But you don't know that to be the case,
15 though, right?

16 A. I'm pretty sure of it.

17 Q. Right, but you don't know that to be the
18 case?

19 A. I'm pretty sure.

20 Q. You're guessing.

21 A. You're guessing.

1 Q. No, I'm looking at documents.

2 MR. ZVENYACH: There are no documents
3 related to Mr. Kane before us.

4 Q. Let's go to 2049.

5 A. But to be clear, this is all news to me.

6 Q. Okay.

7 A. You know, and it's news to me and, in
8 2012, all of this is news to me.

9 Q. Let's go to 2049. You see the middle
10 paragraph there, where it says, Graham talked
11 about how Warren Williams -- I'm sorry, I'm going
12 to go to the top, beginning to put that in
13 context. At the top of number four, at 2049,
14 Graham did this, notwithstanding his public
15 opposition to the lottery contract and the fact
16 that Graham is one of two District of Columbia
17 representatives on the board of directors of
18 WMATA. After I had interviewed Alaka Williams,
19 she and Scott Bolden, her attorney, volunteered
20 information about a later meeting they had had
21 with Councilmember Graham. This was at a time

1 when W2I representatives were meeting with all the
2 members of the committee. Graham scheduled the
3 meeting and it lasted about two hours. Now,
4 Mr. Graham, did you have one meeting with the
5 Williams's or two?

6 MR. ZVENYACH: I have objected on the
7 question. It's related to the lottery contract.
8 It's within the scope of legislative sphere. It's
9 beyond the scope of the Court's order and I'm
10 instructing the witness not to answer.

11 Q. The sentence before that puts that in
12 further context, page 2048, paragraph number
13 three. It says, the investigation disclosed that
14 Graham met with W2 Tech2I representatives and
15 tried to get Warren Williams to withdraw from a
16 WMATA contract in exchange for Graham's support on
17 the lottery contract.

18 MR. ZVENYACH: Objection. Renewed.
19 Beyond the scope of the Court's order. Within the
20 legislative sphere, not relevant and I'm
21 instructing the witness not to answer.

1 Q. And the paragraph after that, at 2049, is
2 not in the final draft and I'd like to ask you
3 about that. Where it says, Graham talked about
4 how Warren Williams -- this is in the context of
5 the, I think, the second meeting you're talking
6 about. Graham talked about how Warren Williams
7 has all the good real estate deals. Graham also
8 talked about how it would take a lot to move him
9 on the lottery contract issue. Graham told them
10 that the conversation is completely off the record
11 and then said that, if Warren Williams, Junior would
12 step off the WMATA contract, then Graham would be
13 willing to get on board with the lottery contract.
14 Alaka Williams told me that Williams had two
15 contracts at the same time, a contract with WMATA
16 to develop property around the Metro station, in
17 Graham's ward, and the lottery contract. Graham
18 was trying to negotiate with Williams to back off
19 the WMATA contract so Graham could rebid the
20 contract and another one of the bidders, who was
21 Graham's favor contractor, could get the contract.

1 Graham said he had talked to a lot of other people
2 who were qualified for these contracts and they
3 were not getting a chance. Williams told Graham
4 that he had already been awarded the contracts and
5 the process had been fair and that Williams
6 couldn't do what Graham wanted. Do you see that
7 paragraph?

8 MR. ZVENYACH: I object to the entirety of
9 it. It's unrelated to the scope of the Court's
10 order. It's within the legislative sphere and not
11 relevant and I instruct the witness not to answer
12 the question.

13 MR. McDANIEL: Just by way of response,
14 the offer to rig a contract in return for a
15 contractor to remove himself from a legally
16 obtained contract, in return for a legislators'
17 support for another contract, would not be
18 protected by legislative immunity.

19 MR. ZVENYACH: If you like to certify that
20 to the Court, you can, but I will note --

21 MR. McDANIEL: And I'm not done. I didn't

1 interrupt you, so let me finish.

2 MR. ZVENYACH: I believe you did, but --

3 MR. McDANIEL: If I did, I apologize.

4 MR. ZVENYACH: Accepted.

5 MR. McDANIEL: All right. What I mean to
6 say, in the context of this language, we're
7 suggesting that there was an offer made by
8 Mr. Graham to support the lottery contract for the
9 Williams's. The Williams's -- the contract, the
10 very contract that Mr. Payne was responsible for
11 managing within the office of the OCFO, that he
12 would support the ratification of that contract if
13 Mr. Williams would agree to remove himself from
14 consideration for the WMATA contract and, if, in
15 fact, that suggestion was made by Mr. Graham, that
16 would not be protected by any legislative
17 immunity. It would be improper. It would be
18 illegal and, for that reason, we're asking him to
19 answer the question whether or not he made that
20 statement and whether or not that was his position
21 and whether or not he made any offer to

1 Mr. Williams to support the lottery contract, the
2 same lottery contract that we're talking about,
3 and support, if Mr. Williams would agree to come
4 off of the WMATA contract.

5 MR. ZVENYACH: Let me object on several
6 grounds. First, despite the novel legal theory, I
7 would point out for the record that, in this draft
8 Andary report, it says there was no allegation or
9 clear violation of any criminal statutes or that
10 he has no jurisdiction to investigate the
11 impropriety of a D.C. councilmember and,
12 accordingly, to the extent that you're suggesting
13 that there is something illegal or criminal,
14 that's not borne out by the Andary report; so
15 that's the first point. The second point is that,
16 even if there is this, sort of, logrolling that
17 you're alleging, it's a novel legal concept to say
18 that, things within the political sphere somehow
19 can come outside of the legislative sphere because
20 of they're somehow not legislative. If you're
21 alleging a crime, I'd ask that you identify that

1 crime and then we can discuss. Third, again, this
2 has nothing to do with the demotion or termination
3 of Eric Payne, so it's beyond the scope of the
4 Court's order and, fourth, we've gone through
5 this. If you have something that you'd like to
6 ask Mr. Graham about Mr. Payne's demotion or
7 termination, you're free to ask him; otherwise,
8 I'm instructing the witness not to answer.

9 MR. McDANIEL: We are alleging a crime.

10 A --

11 MR. ZVENYACH: Which one?

12 MR. McDANIEL: -- the crime of offering
13 support, legislative --

14 MR. ZVENYACH: If you're alleging quid quo
15 pro, there's a financial -- a financial trade.
16 What you're referring to is logrolling. In
17 political logrolling, I'll support your bill, you
18 support my bill, that's called logrolling. It's
19 not a crime despite what you may think; so if you
20 can identify the statute, a common law, something
21 that says there's a crime here, I'll hear it out.

1 MR. McDANIEL: Mr. Williams is not part of
2 any legislature. He's not -- he's not --

3 MR. ZVENYACH: I'm asking you.

4 MR. McDANIEL: I'm telling you that he's
5 not a legislative member.

6 MR. ZVENYACH: So what's the crime?

7 MR. McDANIEL: He's offering a private
8 citizen support for a separate contract, his
9 official support for a separate contract --

10 MR. ZVENYACH: Identify the statute,
11 please.

12 MR. McDANIEL: It's a fraud.

13 MR. ZVENYACH: What's the fraud? It's a
14 misrepresentation --

15 MR. McDANIEL: We'll take it up with the
16 Court and see if we have to come back. All right.

17 MR. ZVENYACH: Again, I renew my point
18 that there's nothing in the Andary report that
19 says there's a violation of any crime.

20 MR. McDANIEL: I'm not asking about --

21 MR. ZVENYACH: Well, you are asking --

1 MR. McDANIEL: No. No. No. I'm not
2 asking about Mr. Andary's findings. I'm asking if
3 this happened.

4 MR. ZVENYACH: Well, I'm answering it's
5 not relevant to Mr. Payne's demotion and
6 termination and it's beyond the scope and;
7 therefore, we assert legislative immunity and,
8 therefore, we also instruct the witness not to
9 answer the question.

10 MR. McDANIEL: Okay.

11 THE WITNESS: It's 3:30.

12 MR. ZVENYACH: It is 3:30. I would note,
13 for the record, that plaintiff's counsel and
14 plaintiff arrived at 1:15. The deposition is
15 limited to three and a half hours, but we are at
16 3:30 at the moment. Mr. Graham does have a
17 hearing at 3:30. We'll make you available, but if
18 you're going to ask questions related to
19 Mr. Payne and his demotion and termination, I will
20 allow the questions; otherwise, we'll be here for
21 the duration.

1 MR. McDANIEL: I don't know that I
2 understand what you mean -- you mean, he's going
3 to stay here and we can continue?

4 MR. ZVENYACH: Yeah. There's court order
5 telling him. We're not going to let him stay
6 beyond 4:30, though.

7 THE WITNESS: 4:30.

8 MR. ZVENYACH: At the latest, that's what
9 the court order says.

10 THE WITNESS: But I can't stay to 4:30.

11 (Deposition Exhibit Number 10 was marked
12 for identification.)

13 THE WITNESS: I would like to request a
14 copy of the Andary deposition. Who releases that?

15 MR. ZVENYACH: Will you provide a copy?

16 MR. McDANIEL: You have to talk to -- I
17 think it's actually under seal.

18 MR. ZVENYACH: So you won't provide a copy
19 of it?

20 MR. McDANIEL: No.

21 BY MR. McDANIEL:

1 Q. I'm going to --

2 THE WITNESS: Why are we unable to get a
3 copy of the Andary deposition?

4 MR. McDANIEL: You may still be able to
5 get it. I'm not saying that you won't be able to
6 get it.

7 THE WITNESS: But you're not willing to
8 cooperate in giving it to us.

9 MR. McDANIEL: Let me just say this,
10 Mr. Graham --

11 THE WITNESS: No, I'd like to know.

12 MR. McDANIEL: Right. I'm not --

13 MR. PARSONS: Let me jump in here.

14 Councilmember Graham, the Andary deposition is
15 currently confidential under the protective order
16 and we have to agree, both the District and the
17 plaintiff, to release it. So they -- what they're
18 saying, they can't release it on their own.

19 THE WITNESS: But they're saying that they
20 object to the release of it. Are you objecting to
21 the release of it?

1 MR. PARSONS: At the moment, yes, because
2 we are concerned that it raises other privacy
3 issues regarding other individuals that may or may
4 not agree, but it's definitely something we can
5 discuss.

6 MR. ZVENYACH: We'll discuss it with
7 Mr. Parsons. But so the record is clear,
8 plaintiff does not object to the release of the
9 Andary deposition.

10 THE WITNESS: Right. I just want to say,
11 for the record, that I'm troubled by the fact that
12 part of all this record is released and publically
13 discussed and part of it isn't and, you know, that
14 surely must be of concern to the attorney general
15 and everyone else who is involved in this. You
16 know, it's a very selective release of some
17 documents, a withholding of other documents and
18 it's very troubling to me and, most recently, this
19 draft Andary report, where did this come from?
20 Did you provide it?

21 MR. PARSONS: Councilmember Graham, I'll

1 be happy to talk you after the deposition is over.

2 THE WITNESS: I mean, really. Did you get
3 all that?

4 MR. McDANIEL: I want the record to
5 reflect that when he asked, who provided it, he
6 asked Mr. Parsons to provide it.

7 BY MR. McDANIEL:

8 Q. I'm showing you what's been marked as
9 Deposition Exhibit Number 10, which is a portion
10 of the transcript from the deposition of
11 Mr. Natwar Gandhi.

12 A. Uh-huh.

13 Q. I'm going to ask you to review with me
14 from page 150, line eight, to page 151, lines one
15 through 18.

16 MR. ZVENYACH: All of this from 150 to
17 151, line 18?

18 MR. McDANIEL: Right.

19 BY MR. McDANIEL:

20 Q. So the question that was posed to
21 Mr. Gandhi was: Now, have you spoken to

1 Mr. Graham about this investigation report since
2 your last deposition?

3 "ANSWER: Repeat the question again,
4 please.

5 "QUESTION: Have you spoken to
6 Mr. Graham about Mr. Andary's investigative report
7 since your last deposition?

8 "ANSWER: Yes.

9 "QUESTION: When did you speak to him?

10 "ANSWER: I would say about a week ago.

11 "QUESTION: By phone or in person?

12 "ANSWER: By phone.

13 "QUESTION: What was the nature of the
14 communication between you and him?

15 "ANSWER: He was concerned that the report
16 was made public.

17 "QUESTION: What was your response to his
18 concern?

19 "ANSWER: I said I would not comment on
20 any of these issues. I would let our lawyers talk
21 with him.

1 "QUESTION: Is that the only time you
2 spoke with him?

3 "ANSWER: Right.

4 "QUESTION: And do you know if your lawyer
5 spoke with him or them subsequent thereto?

6 "ANSWER: Yes.

7 "QUESTION: And who have you spoken to?

8 "ANSWER: David Tseng.

9 "QUESTION: And when would that have taken
10 place?

11 "ANSWER: In the course of last week.

12 "QUESTION: And do you know what the
13 purpose of that conversation was?

14 "ANSWER: About making this report
15 public -- this record public."

16 Mr. Graham, do you recall having that
17 conversation with Mr. Gandhi?

18 A. I'm not sure. I'm really not sure. I
19 remember the conversation with David Tseng. I
20 don't know about the conversation -- I mean, it
21 appears as though I did, but I definitely remember

1 the conversation with David Tseng because he came
2 to my office.

3 Q. And this was conducted -- the deposition
4 conducted February 21st, 2012, based upon the
5 notations on the deposition.

6 A. Uh-huh.

7 Q. What concerns did you have about making
8 the report public?

9 A. Well, again, it's useful to keep in mind,
10 I had never seen this report. I did not know of
11 this report's existence until a few days prior to
12 this.

13 Q. When you say, prior to this, what do you
14 mean?

15 A. Until February 2012, I did not know there
16 was a report. I didn't know there was a draft
17 report. I didn't know that -- any of this until
18 that time and, so, I think when I saw the report,
19 which came to me, at my best recollection, is
20 through Jo-Ann Armao, when I saw the report, I
21 did -- I was reminded that this says confidential

1 source, and so I raised the question, why was it
2 being released if it was a confidential source and
3 that's protected against release.

4 Q. And it's your testimony then that it
5 didn't have anything to do with the substance or
6 the implications to you of the substance of the
7 report?

8 A. No. I think -- I think I never reached
9 that point, because it had to do with the fact
10 that it was labeled confidential source and it was
11 not meant to be released. But I had never seen
12 the report, so I wasn't aware of the content of
13 the report either.

14 Q. Having had an opportunity to review the
15 report now, do you, as you sit here today, have an
16 objection to making it public?

17 A. It has been made public.

18 Q. I mean, officially, public, if you will.

19 A. It has officially been made public. It's
20 been released by the D.C. attorney general.

21 Q. So in turn, you have no objection?

1 A. It's been made public.

2 MR. PARSONS: If I can clarify, there was
3 a redacted version of the report that was released
4 earlier this year. The unredacted portion has
5 never been released by the District nor have any
6 of the draft versions been released.

7 BY MR. McDANIEL:

8 Q. So the question would be then, would you
9 have an objection to any of the drafts being made
10 public?

11 MR. ZVENYACH: Again, I think he's
12 answered that question. He says that portion that
13 has been made public has been made public.

14 Q. What about those that have not been made
15 public?

16 A. Well, why is my opinion relevant to this?

17 Q. It's relevant.

18 A. Why is it relevant? I don't control these
19 documents. I haven't seen these --

20 Q. So either you would be willing to or you
21 would not be willing to?

1 A. My view on this is not relevant.

2 Q. You have to answer the question, sir.

3 MR. ZVENYACH: He doesn't have to answer
4 the question.

5 THE WITNESS: I don't have to answer
6 anything.

7 MR. ZVENYACH: It's beyond the scope of
8 the Court's order.

9 MR. McDANIEL: All right.

10 MR. ZVENYACH: Do you want to take a few
11 moments?

12 THE WITNESS: Yeah, I have to make a phone
13 call. I have to explain -- I have 50 people
14 waiting for me in a hearing room.

15 MR. McDANIEL: I'm sorry, one second. We
16 can take a break.

17 (Brief recess.)

18 (Deposition Exhibit Number 11 was marked
19 for identification.)

20 BY MR. McDANIEL:

21 Q. I'm going to mark this as Number 11 and

1 read it into the record and then ask you some
2 questions about it. This is an excerpt from --
3 hold on one second. I'm going to show you what's
4 been marked as Exhibit Number 11 and --

5 A. This is Andary here.

6 Q. -- I'm going to make this quicker,
7 Councilmember Graham, by just reading this, from
8 page 43 through 48 and ask you some questions.

9 A. All right.

10 Q. At line ten:

11 "QUESTION: Do you know Councilmember Jim
12 Graham?

13 "ANSWER: Well, yes. I mean, I don't know
14 him on a friendship basis, but I met with him a
15 couple of times."

16 This is the deposition of Robert Andary
17 taken on February 10, 2012.

18 "QUESTION: Did you have communication
19 with Dr. Gandhi about Mr. Graham?

20 "ANSWER: I'm sure that we would have
21 discussed the allegation based on his allegation,

1 him being Councilmember Graham, but I don't have a
2 specific recollection of it.

3 "QUESTION: Let me ask it a different way.
4 Was your investigation of Mr. Graham prompted by a
5 communication that you had with Mr. Gandhi?

6 "ANSWER: Well, it wasn't an investigation
7 of Mr. Graham.

8 "QUESTION: Investigation of Mr. Payne?

9 "ANSWER: Yes, at the insistence of
10 Mr. Graham.

11 "QUESTION: Was it prompted by --

12 "ANSWER: My recollection of how that
13 happened is that Gandhi told Tseng to handle it
14 and Tseng told me about the allegation and the
15 investigation would be the appropriate way to
16 resolve it.

17 "QUESTION: You did not have communication
18 with Mr. Gandhi in that regard?

19 "ANSWER: I believe the original
20 allegation came to me by way of Tseng, not by
21 Dr. Gandhi. I made mention here --"

1 And then there's an objection made by
2 Mr. Parsons. And then, at page 45:

3 "ANSWER: Right. I don't see it in here,
4 but I believe it was David Tseng that told me
5 about it. He contacted me and said he wanted to
6 get together because he had this information and
7 relayed to me what had happened and, based on
8 that, I did the investigation.

9 "QUESTION: What did David Tseng -- he
10 said he -- was this in a meeting?

11 "ANSWER: Yes.

12 "QUESTION: And when would that have
13 occurred?"

14 And then there's a discussion between
15 Mr. Temple and Mr. Parsons.

16 "ANSWER: I want to say that it was in
17 early June. I remember we had to meet with
18 Graham, initially, to flesh out the allegation and
19 I remember we had trouble -- I think it was at
20 this point we had trouble getting in touch with
21 him because he was on a trip, so it may have been

1 delayed somewhat, but that may have been the final
2 meeting.

3 "QUESTION: Do you know if Dr. Gandhi had
4 a meeting with Mr. Graham about Mr. Payne prior to
5 your investigation?

6 "ANSWER: Yes. Well, I wouldn't call it a
7 meeting. I know that Mr. Graham, the first thing
8 he did was to complain about Eric to Dr. Gandhi.
9 Now, whether that was in the hallway, outside of a
10 council hearing or by phone or in a face-to-face
11 meeting, I don't recall.

12 "QUESTION: How do you know that?

13 "ANSWER: How do I know that?

14 "QUESTION: That Mr. Graham talked to
15 Dr. Gandhi.

16 "ANSWER: Because that was the basis of
17 Dr. Gandhi asking David Tseng to look into it.
18 That was the genesis of what he did.

19 "QUESTION: I'm going to back to Tseng's
20 communication with you. Let me go back to --
21 that's in June?

1 "ANSWER: That's what I think. Yeah, it
2 was definitely prior to June 26, which is when I
3 talked to Graham, because that was the first thing
4 I did is I talked to Graham.

5 "QUESTION: So as part of this
6 investigation, you did, in fact, meet with
7 Councilmember Graham?

8 "ANSWER: Absolutely. The first thing you
9 do normally in an investigation is you meet with
10 the complainant and you get as much information as
11 you can and you take it from there and, since he
12 was the one making the allegation, I have to use
13 that as the basis of my investigation. I have to
14 get as many facts as I could from him. I say,
15 facts, I don't know if you can call it facts based
16 on my investigation.

17 "QUESTION: I want to go back to David
18 Tseng and his communication with you. Now, his
19 communication -- your relationship with David
20 Tseng certainly --

21 MR. ZVENYACH: I don't have that page.

1 MR. McDANIEL: I'm sorry, page 48.

2 MR. ZVENYACH: Yeah, we stopped -- here we
3 go, page 48.

4 BY MR. McDANIEL:

5 Q. -- "predated the Graham investigation?

6 "ANSWER: Absolutely.

7 "QUESTION: The Graham allegation?

8 "ANSWER: Yes. We had a content contact.

9 "QUESTION: What was the nature of your
10 contact with David Tseng?

11 "ANSWER: A variety of things. Like I
12 said, we would have the weekly meetings with
13 Dr. Gandhi that he would attend.

14 "QUESTION: They would not always involve
15 legal issues per se?

16 "ANSWER: No. No. In fact, they rarely
17 involve legal issues, but I would always be
18 involved with David Tseng in connection with the
19 various outside reviews that were going on at the
20 time. He would be somebody that would be
21 intimately involved and how he would respond to

1 the reviews."

2 Now, Councilmember Graham --

3 A. I'm listening.

4 Q. -- you would acknowledge, would you not,
5 that -- at least the representation here, is that
6 the insistence of the investigation was by you?
7 In other words, that you insisted upon the
8 investigation?

9 A. No, I do not acknowledge that. Absolutely
10 not.

11 MR. ZVENYACH: That's actually not what's
12 borne out by the transcript either.

13 A. In fact, this confirms the accuracy of
14 what I said earlier.

15 Q. Okay.

16 A. And that I did not -- I never asked for an
17 investigation. I never knew an investigation was
18 going on until Mr. Andary contacted me. This
19 confirms that Gandhi talked to Tseng and Tseng
20 spoke to Andary and I requested none of that. Did
21 you hear what I said?

1 Q. It's on the record.

2 A. But would you be able to read it from the
3 record?

4 MR. ZVENYACH: Speaking of the record, I
5 just want to reiterate the -- and renew the
6 concerns about the confidentiality. Now that
7 we're actually in the Andary report, all of the
8 conversations that are related to the Andary
9 report are confidential and protected under the
10 protective order.

11 THE WITNESS: Would that apply to the
12 client as well as to the attorney?

13 MR. ZVENYACH: It sure does.

14 THE WITNESS: Is the client aware that it
15 applies to him?

16 MR. ZVENYACH: Councilmember --

17 THE WITNESS: Do we get to ask questions
18 now?

19 MR. McDANIEL: Not yet.

20 THE WITNESS: Oh, not yet?

21 MR. McDANIEL: Yeah. Mr. Graham, I know

1 you taught law. You don't get to ask questions --

2 THE WITNESS: Well, I know a little
3 something about the law.

4 MR. McDANIEL: All right.

5 THE WITNESS: Did you get my point on
6 this?

7 MR. McDANIEL: I did. Thank you.

8 (Deposition Exhibit Number 12 was marked
9 for identification.)

10 THE WITNESS: But it does concern me that
11 there's been so little respect shown for the judge
12 in this case, by your client, and by the manner in
13 which he has operated and I really do think that
14 that, you know, that we have to have some
15 clarification --

16 MR. ZVENYACH: Councilmember, we'll deal
17 with that afterwards. Let's keep going.

18

19 BY MR. McDANIEL:

20 Q. I'm showing you what's been marked as
21 Deposition Exhibit Number 12.

1 A. Yes, I know this one.

2 Q. What is this?

3 A. This is -- I meet regularly with -- this
4 is off the point, but let me just say, I meet
5 regularly with Dr. Gandhi, who gives
6 councilmembers individual opportunities to speak
7 to him about City finances and that was the
8 purpose of this meeting. In fact, it says that,
9 update on D.C. finances.

10 Q. So you all did meet on this day?

11 A. I believe -- I suspect we did.

12 Q. And was there any discussion regarding
13 Mr. Payne --

14 MR. PARSONS: Counsel, can you send a copy
15 down?

16 MR. McDANIEL: I apologize, yep.

17 BY MR. McDANIEL:

18 Q. Was there any discussion on this day, that
19 you recall, regarding Mr. Payne and his employment
20 with the OCFO's office?

21 A. I don't believe so.

1 Q. Or his handling of the lottery contract?

2 A. I don't believe so.

3 MR. McDANIEL: Indulge me one second. No
4 further questions.

5 MR. PAYNE: Hold on.

6 MR. McDANIEL: Before I say that. Last
7 exhibit, Mr. Graham.

8 (Deposition Exhibit Number 13 was marked
9 for identification.)

10 BY MR. McDANIEL:

11 Q. I'm showing you what's been marked as
12 Exhibit Number 13.

13 A. Okay.

14 Q. Now, it's your understanding, Mr. Graham,
15 that if Mr. Andary had found something to be
16 illegal or inappropriate that you would have done
17 something in addition to his report?

18 MR. ZVENYACH: I'm sorry, what's the
19 question?

20 MR. McDANIEL: I'm wondering if
21 Mr. Graham's position is that, if Mr. Andary found

1 any additional -- any inappropriate activity on
2 the part of Mr. Graham, that he would have done
3 something in addition to the report that he
4 already drafted.

5 MR. ZVENYACH: I'm not sure how that's
6 related to -- I'm sorry, I really am trying to be
7 helpful.

8 MR. McDANIEL: Let me just do this. At
9 page 105, let me ask you a question about this
10 language here.

11 BY MR. McDANIEL:

12 Q. This is from the deposition of Robert
13 Andary conducted on February 10, 2012, starting at
14 line 12:

15 "QUESTION: But she didn't have to sign
16 off on your report?

17 "ANSWER: Well, what I was doing here is a
18 pretty serious allegation against Graham."

19 A. Who is she?

20 Q. That's Ms. Jacobs, Angell Jacobs.

21 A. Okay.

1 Q. "What I was doing here is, a pretty
2 serious allegation against Graham had come up
3 during the investigation, which was unrelated to
4 Eric Payne except peripherally because he was
5 blaming Eric Payne for the genesis of this issue
6 and I wanted to be sure and, again, I'm
7 speculating, but I wanted to be sure she was okay
8 with me saying, I'm not going to do this anymore,
9 because I was disgusted with Graham and I've
10 already exonerated Payne and it's possible she
11 would have been looking at it and say, boy, I
12 think you should continue looking at this whole
13 issue or I may have wanted to know if she wanted
14 me to transmit it to the IG, but again, I don't
15 know, but that may account for me putting draft on
16 that because, depending upon what she said, I may
17 have done other things." Was it your
18 understanding, at all, during any point in time,
19 there was going to be a review of substance by
20 Ms. Jacobs?

21 MR. ZVENYACH: Objection. The

1 councilmember has already indicated on the record
2 that he doesn't -- he didn't know that there was a
3 report until February of 2012 and this passage
4 that you read, which I'm seeing for the first
5 time, makes it very clear that there is
6 speculation and guessing of Mr. Andary about
7 Ms. Jacobs' motivations, and I don't see how
8 that's, at all, relevant to demotion or
9 termination of Mr. Payne.

10 MR. McDANIEL: Very well.

11 MR. ZVENYACH: In fact, it says, it's
12 unrelated to Eric Payne.

13 BY MR. McDANIEL:

14 Q. One last question, Mr. Graham, have you
15 been contacted by the FBI with respect to this
16 matter?

17 A. Absolutely not.

18 THE WITNESS: May I see the subpoena that
19 you say was served on you?

20 MR. McDANIEL: Which one?

21 THE WITNESS: You said there was a

1 subpoena served on you relating to the lottery
2 contract. May we see it?

3 MR. McDANIEL: The FBI subpoena?

4 THE WITNESS: Whatever you got, may we see
5 the subpoena?

6 MR. McDANIEL: No, I didn't bring that
7 with me.

8 THE WITNESS: Can you make it available?

9 MR. McDANIEL: I don't know that I would
10 do that, but I could give you the contact for it,
11 with the FBI.

12 THE WITNESS: Well, why wouldn't you --

13 MR. ZVENYACH: That's enough. Any other
14 questions?

15 MR. McDANIEL: No.

16 MR. ZVENYACH: I don't have any further
17 questions, Councilmember Graham.

18 THE WITNESS: Well, I have something I
19 want to add for the record.

20 MR. McDANIEL: For the record.

21 THE WITNESS: For the record, at no time

1 did I request that you be demoted. I didn't know
2 you were demoted, even when you were demoted, but
3 at no time did I request that you be demoted and
4 at no time did I call for you to be terminated and
5 I didn't even know you were terminated when you
6 were terminated. So just for the record, since
7 these are the questions that you were supposed to
8 be asking me, I thought we'd put that on the
9 record. To be absolutely clear, I didn't know you
10 were demoted. I didn't ask for you to be demoted.
11 I didn't know you were terminated. I didn't ask
12 for you to be terminated.

13 MR. McDANIEL: Now, I will move to strike
14 it because it's nonresponsive. We didn't ask that
15 question.

16 THE WITNESS: Well, I can't put things on
17 the --

18 MR. McDANIEL: No, you can't just put
19 stuff on the record.

20 MR. ZVENYACH: Thank you, Councilmember.

21 MR. McDANIEL: We'll move to strike it.

1 MR. PARSONS: Before we close the record,
2 I don't have any questions, Councilmember, don't
3 worry. I would like to note that --

4 MR. ZVENYACH: I'm sorry, does
5 Councilmember have to be here or can he be
6 excused? I don't have any questions. It's just
7 formalities.

8 MR. PARSONS: I have no objection. He can
9 be excused as far as I'm concerned.

10 THE WITNESS: I can be excused? I get to
11 miss all the good stuff?

12 MR. ZVENYACH: You'll see the record.

13 THE WITNESS: Thank you all very much.

14 MR. ZVENYACH: Thank you, Councilmember.

15 (Councilmember Graham left the deposition
16 room.)

17 MR. PARSONS: I just want to note for the
18 record that the District considers the entire
19 deposition, starting at the discussion of Exhibit
20 9, the Andary report, continuing through the
21 discussion of Exhibit 11, which is an excerpt from

1 Mr. Andary's deposition, as well as the question
2 of Exhibit 13, which is another excerpt from
3 Mr. Andary's deposition, to be confidential
4 pursuant to the protective order in this case.

5 MR. ZVENYACH: And I have nothing further,
6 other than to say, thank you. Obviously, we'll
7 expect a copy so that we can review the
8 deposition. I don't have anything further to say.
9 Thank you very much.

10 MR. McDANIEL: Just in response to
11 Mr. Parsons, we should also mention, for the
12 record, that we have had discussions, several
13 discussions about removing certain items from the
14 protective order and we believe that this would
15 fall in the body of that discussion, but we'll
16 continue that for another day.

17 MR. ZVENYACH: And we've indicated that we
18 have objections to the release of that same
19 material related to the discussion from Mr. Andary
20 until we had an opportunity to work on that.
21 Thank you all very much and the time is 4:10.

DEPOSITION OF COUNCILMEMBER JIM GRAHAM
CONDUCTED ON 7/11/2012

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1 (The deposition concluded at 4:10 p.m.)
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CERTIFICATE OF DEPONENT

I hereby certify that I have read and
examined the foregoing transcript, and the same is
a true and accurate record of the testimony given
by me.

Any additions or corrections that I feel
are necessary, I will attach on a separate sheet
of paper to the original transcript.

Councilmember Jim Graham

Dated _____

1 CERTIFICATE OF NOTARY PUBLIC

2 I, Kelly Susnowitz, the officer before whom
3 the foregoing deposition was taken, do hereby
4 certify that the witness whose testimony appears
5 herein was duly sworn by me; that the testimony of
6 said witness was taken by me in shorthand and this
7 transcript typed under my direction; that said
8 transcript is a true record of the testimony given
9 by said witness; that I am neither counsel for,
10 related to, nor employed by any of the parties to
11 the action in which this deposition was taken;
12 and, further, that I am not a relative or employee
13 of any attorney or counsel retained by the parties
14 hereto, nor financially or otherwise interested in
15 the outcome of the action.

16 _____
17 Notary Public in and for the
18 District of Columbia

19
20 My commission expires:

21 June 13, 2016

DEPOSITION OF COUNCILMEMBER JIM GRAHAM
CONDUCTED ON 7/11/2012

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CONDUCTED ON 7/11/2012

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